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Part 1
General Provisions

19-1-101. Declaration of policy. In order to extend to employees of the state and its political subdivisions, including employees of the state and its political subdivisions who are members of the public employees' retirement system of the state of Montana, and to the dependents and survivors of such employees the basic protection accorded to others by the old age and survivors' insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act. It is also the policy of the legislature that the protection afforded employees in positions covered by the public employees' retirement system of the state of Montana on the date an agreement under this chapter is made applicable to service performed in such positions or receiving periodic benefits under such retirement system at such time will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

History: En. Sec. 1, Ch. 44, L. 1953; amd. Sec. 1, Ch. 270, L. 1955; R.C.M. 1947, 59-1101.

19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision of the state.

(2) (a) The term "employment" means any service performed by an employee in the employ of the state or any political subdivision of the state for the employer, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or

(ii) service that under the Social Security Act may not be included in an agreement between the state and the secretary of health and human services entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term "employment".

(c) Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term "employment" if and when the governor issues, with respect to the service, a certificate to the secretary of health and human services pursuant to 19-1-304.

(3) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954, as the codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954 and as the codes may from time to time be amended.

(4) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but only if the instrumentality is a juristic entity that is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, such as but not limited to school districts and housing authorities.

(5) The term "secretary of health and human services" means the secretary of the United States department of health and human services; includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions; and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any function.

(6) The term "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant to the act, as the act has been and may be amended.

(7) The term "state agency" means the public employees' retirement board of the public employees' retirement system of the state of Montana.

(8) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration that, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act.

History: En. Sec. 2, Ch. 44, L. 1953; amd. Sec. 2, Ch. 270, L. 1955; amd. Sec. 1, Ch. 64, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 59-1102; amd. Sec. 32, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: **Chapter 10 throughout section substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.**

19-1-103. Exclusions. This chapter shall not apply to and there shall be excluded from the operation thereof all employees of the state and of the political subdivisions thereof operating under the provisions of any retirement plan for firefighters.

History: En. Sec. 8, Ch. 44, L. 1953; amd. and redes. as Sec. 10, Ch. 44, L. 1953 by Sec. 10, Ch. 270, L. 1955; amd. Sec. 3, Ch. 97, L. 1959; amd. Sec. 1, Ch. 122, L. 1974; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 59-1108.

19-1-104. Retirement systems to be considered separate. (1) Pursuant to section 218(d)(6) of the Social Security Act, the public employees' retirement system of the state of Montana is, for the purposes of this chapter, considered a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered thereby.

(2) Pursuant to section 218(p)(1) of the Social Security Act, the Montana judges' retirement system, the sheriffs' retirement system, the Montana state game wardens' retirement system, the highway patrol officers' retirement system of the state of Montana, the public employees' retirement system of the state of Montana, and each municipal police retirement fund and each city participating in the municipal police officers' retirement system are, for the purposes of this chapter, considered separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having positions covered thereby.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(1); amd. Sec. 2, Ch. 114, L. 1979; amd. Sec. 1, Ch. 264, L. 1981; amd. Sec. 1, Ch. 217, L. 1989.

Part 2

Administration

19-1-201. State agency to make rules. The state agency shall make and publish such rules, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter.

History: En. Sec. 7, Ch. 44, L. 1953; amd. and redes. as Sec. 9, Ch. 44, L. 1953 by Sec. 9, Ch. 270, L. 1955; R.C.M. 1947, 59-1107.

19-1-202. Costs of administration. All costs allocable to the administration of this chapter shall be charged to the retirement division pension trust fund. So much of the costs as are not defrayed by interest and income earned upon the contribution account, which has been credited to the retirement division pension trust fund, as provided in 19-1-602, shall be paid to the state agency for deposit to the retirement division pension trust fund by each department of the state and by the participating divisions, instrumentalities, and political subdivisions of the state pro rata according to their respective contributions.

History: En. Sec. 6, Ch. 44, L. 1953; amd. and redes. as Sec. 8, Ch. 44, L. 1953 by Sec. 8, Ch. 270, L. 1955; amd. Sec. 5, Ch. 248, L. 1965; amd. Sec. 2, Ch. 109, L. 1967; amd. Sec. 5, Ch. 64, L. 1977; R.C.M. 1947, 59-1106; amd. Sec. 1, Ch. 282, L. 1983.

Part 3

Referendum and Certification

19-1-301. Authorization of referendum by governor. With respect to members of the public employees', highway patrol officers', judges', and game wardens' retirement systems, the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision, he shall authorize a referendum upon the request of the governing body of the subdivision.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(2); amd. Sec. 2, Ch. 264, L. 1981; amd. Sec. 1, Ch. 217, L. 1989.

19-1-302. Conduct of referendum. In either case, the referendum shall be conducted and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this chapter.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(3).

19-1-303. Notice of referendum. The notice of referendum required by section 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum considers necessary and sufficient, informing the employees of the rights which will accrue to them and their dependents and survivors and the liabilities to which they will be subject if their services are included under an agreement under this chapter.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(4).

19-1-304. Certification by governor. Upon receiving satisfactory evidence that with respect to a referendum the conditions specified in section 218(d)(3) of the Social Security Act have been met, the governor shall certify the results of the referendum to the secretary of health and human services.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(5); amd. Sec. 33, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 at end substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

Part 4
Federal-State Agreement

19-1-401. Authority for federal-state agreement. The state agency, with the approval of the governor, may enter, on behalf of the state, into an agreement with the secretary of health and human services, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision of the state with respect to services specified in the agreement that constitute "employment", as defined in 19-1-102.

History: En. Sec. 3, Ch. 44, L. 1953; amd. and redes. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part); amd. Sec. 34, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 near middle substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

19-1-402. Contents of federal-state agreement. The agreement authorized by 19-1-401 may contain provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and secretary of health and human services shall agree upon, but, except as may be otherwise required or permitted by or under the Social Security Act as to the services to be covered, the agreement must provide in effect that:

(1) benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;

(2) the state will pay to the secretary of the treasury of the United States, at a time or times as may be prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes that would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) the agreement must be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but may not be effective with respect to services performed prior to the first day of the calendar year in which the agreement is entered into or in which the modification of the agreement making it applicable to services is entered into, except that the effective date may be made retroactive to the extent permitted by section 218(f) of the Social Security Act;

(4) all services that constitute employment and are performed in the employ of the state by employees of the state must be covered by the agreement; and

(5) all services that constitute employment, are performed in the employ of a political subdivision of the state, and are covered by a plan that is in

conformity with the terms of the agreement and has been approved by the state agency under part 5 must be covered by the agreement.

History: En. Sec. 3, Ch. 44, L. 1953; amd. and redes. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part); amd. Sec. 35, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 throughout section deleted citations to defined terms; in introductory clause, at beginning, substituted "The agreement authorized by 19-1-401" for "Such agreement" and near middle substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

Part 5

Plans for Employees of Political Subdivisions

19-1-501. Submission of plan. Each political subdivision of the state shall submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part).

19-1-502. Approval of plan by state agency. (1) A plan and any amendment thereof shall be approved by the state agency if it finds that the plan or the plan as amended is in conformity with such requirements as are provided in regulations of the state agency.

(2) The state agency may not finally refuse to approve a plan submitted by a political subdivision under 19-1-501 and may not terminate an approved plan without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part).

19-1-503. Required provisions of plan. A plan may not be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) it provides that all services that constitute employment and that are performed in the employ of the political subdivisions by employees of the political subdivisions will be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(C) of the Social Security Act is applicable;

(3) it specifies the sources from which the funds necessary to make the payments required by 19-1-704 and 19-1-706 are expected to be derived and contains reasonable assurance that the sources will be adequate to make the payments;

(4) it provides for methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make reports, in a form and containing information, as the state agency may require and will comply

with the provisions that the state agency or the secretary of health and human services finds necessary to assure the correctness and verification of the reports;

(6) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provision contained in the plan. The termination is to take effect at the expiration of any notice and on conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(2); amd. Sec. 36, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 in (2) deleted citation to defined term; in (5) substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

Part 6

Contribution Account

19-1-601. Establishment of contribution account. There is hereby established, in place of the fund known as the contribution fund, an agency account for the social security program in the agency fund to be known as the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(1).

19-1-602. Management of account. (1) All moneys in the account shall be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency is vested with full power, authority, and jurisdiction over the account, including all moneys and property or securities belonging thereto. It may perform any and all acts, whether or not specifically designated, which are necessary to the administration of the account and are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account in investments of the same character as are permitted by 17-6-211 for the investment of moneys in the long-term investment fund. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the state general fund.

(4) No later than June 30, 1986, the state agency shall calculate an amount equal to the earned income from current and previous fiscal years in the contribution account, less all payments and credits due or owing, and transfer this amount to the state general fund.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(3); amd. Sec. 3, Ch. 264, L. 1981; amd. Sec. 1, Ch. 4, Sp. L. June 1986.

19-1-603. Limit on use of account. The contribution account shall be used and administered exclusively for the purpose of this chapter. Subject to the provisions of 19-1-602, withdrawals from the account shall be made solely for payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under 19-1-401 and 19-1-402, payment of refunds provided for in 19-1-702, and refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(4).

19-1-604. Payments from account. (1) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under 19-1-401, 19-1-402, and the Social Security Act.

(2) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this part and with such regulations as the state agency may prescribe pursuant thereto.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(5).

Part 7

Payments into Contribution Account

19-1-701. Sources of funds in account. The contribution account shall consist of and there shall be deposited in such account:

(1) all contributions, interest, and penalties collected under 19-1-702 and 19-1-704 through 19-1-706;

(2) all moneys appropriated thereto by the legislature of the state of Montana;

(3) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account; and

(4) all other moneys received for the account from any other source.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(2).

19-1-702. Contributions by state employees. (1) Every employee of the state whose services are covered by an agreement entered into under 19-1-401 and 19-1-402 shall be required to pay, for the period of such coverage, contributions with respect to wages (as defined in 19-1-102) equal to the amount of employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after February 20, 1953.

(2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments or refund if adjustment is impracticable shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

History: En. as Sec. 5, Ch. 44, L. 1953 by Sec. 5, Ch. 270, L. 1955; amd. Sec. 198, Ch. 147, L. 1963; R.C.M. 1947, 59-1103.1.

19-1-703. Budgeting by state departments. Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the department of administration in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(6).

19-1-704. Contribution by political subdivision. Each political subdivision as to which a plan has been approved under part 5 of this chapter shall pay, at such time or times as the state agency may prescribe by regulation, contributions with respect to wages (as defined in 19-1-102) in the amounts and at the rates specified in the applicable agreement entered into by the state agency under 19-1-401 and 19-1-402.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(a).

19-1-705. Deduction of employee contribution by political subdivision. (1) Each political subdivision required to make payment under 19-1-704 shall, in consideration of the employee's retention in or entry upon employment after February 20, 1953, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in 19-1-102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act and shall deduct the amount of such contributions from his wages as and when paid.

(2) Contributions so collected partially discharge the liability of the political subdivision or instrumentality under 19-1-704. Failure to deduct the contribution does not relieve the employee or employer of liability therefor.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(b).

19-1-706. Collection of delinquent payments from political subdivision. (1) The purpose of this section is to encourage compliance with the federal deposit and reporting procedures, not to produce revenue. Therefore, the state agency may waive part or all of the interest penalty when, in the opinion of the board, a reasonable explanation has been submitted in writing by the political subdivision.

(2) Delinquent payments due under 19-1-704 may, with interest at the rate of 9% a year, or $10 per day, whichever is greater, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other

moneys payable to the subdivision by any department, agency, or fund of the state.

History: **En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(5); amd. Sec. 4, Ch. 264, L. 1981.**

Part 8

Participation of Teachers

19-1-801. Purpose — general repeal. All acts and parts of acts in conflict herewith are hereby repealed to the extent of any such conflict, it being the purpose of this part to bring under the provisions of parts 1 through 7 of this chapter or any act amendatory thereof teachers and staff members of districts and institutions of higher education for supplemental social security coverage as provided by the federal Social Security Act.

History: **En. Sec. 5, Ch. 271, L. 1955; R.C.M. 1947, 59-1113.**

19-1-802. No effect on rights under other laws. Nothing in this part may be construed to prejudice or otherwise affect any rights, benefits, or privileges heretofore accrued under any other law of this state. It is the intent of this legislation to permit supplementation of present retirement benefits under existing law with social security benefits. It is also the intent to permit teachers and staff in any district or institution of higher education so electing to become members of more than one retirement system, to receive credit under more than one system for the same service, and to receive benefits from more than one system. No benefits received under either system may be deducted from any other or separate system.

History: **En. Sec. 4, Ch. 271, L. 1955; amd. Sec. 9, Ch. 64, L. 1977; R.C.M. 1947, 59-1112.**

19-1-803 through 19-1-810 reserved.

19-1-811. Referendum by school district. A school district of the state may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum, pursuant to section 218 of the federal Social Security Act, among the members of the staff and teachers of the school or schools under the jurisdiction of the board of trustees. If the majority of votes cast in the referendum indicates that the staff and teachers approve, then the board of trustees shall certify to the department of administration that the conditions for coverage by social security, required by section 218 of the Social Security Act, have been complied with.

History: **En. Sec. 1, Ch. 271, L. 1955; amd. Sec. 20, Ch. 391, L. 1973; amd. Sec. 6, Ch. 64, L. 1977; R.C.M. 1947, 59-1109.**

19-1-812. Eligibility of staff and teachers. Upon the certification provided for in 19-1-811, the staff and teachers of the district are eligible for coverage under the provisions of the federal Social Security Act.

History: **En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(1).**

19-1-813. Collection of contributions. The fiscal officer of the district shall thereafter collect the contributions required under the federal Social Security Act, section 218, from the staff and teachers by payroll deduction and from the school district as employer. The funds collected shall be deposited with the department of administration and held in the contribution account as provided by parts 1 through 7 of this chapter.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(2).

19-1-814. District's contribution to be first obligation. For the purposes of this part, the contributions with respect to services equivalent to the employer's tax established by the federal Social Security Act are the first obligation against any state funds received for school support by any school district, high school district, or county high school and shall be paid therefrom before any other expenditure.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(3).

19-1-815. Merger of reporting entities. If the approval of referenda at different times results in the establishment of two separate social security reporting entities for a high school district and an elementary school district and the high school building is located in the elementary school district, the state agency shall, upon request of the boards of trustees in both districts, merge the two reporting entities to form a single reporting entity if the elementary school district and high school district:

(1) have boards of trustees of which a majority of each board is composed of the same persons;

(2) are administered by the same executive officer; and

(3) have payroll calculations made in the same payroll application.

History: En. Sec. 1, Ch. 350, L. 1983.

19-1-816 through 19-1-820 reserved.

19-1-821. Retirement system to be considered separate for each institution. For the purposes of this part, the teachers' retirement system of the state of Montana is considered a separate retirement system with respect to each state institution of higher education in Montana, and each institution and the teachers therein shall be treated separately and independently from the other institutions and teachers.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(1).

19-1-822. Referendum — institution of higher education. On request of the president of an institution, the governor shall designate an agency or individual to give notice of and supervise a referendum in the retirement system for that institution in compliance with the requirements prescribed by section 218 of the Social Security Act.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(2).

19-1-823. Certification by governor. If the majority of votes cast in the referendum indicates that the majority of voters desire it, the governor shall certify to the secretary of health and human services that the conditions set forth in section 218 of the Social Security Act have been complied with in respect to the retirement system voting in the referendum.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(3); amd. Sec. 37, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 near middle substituted "secretary of health and human services" for "secretary of health, education, and welfare".

19-1-824. Federal-state agreement. Upon certification, the governor shall designate an official to enter into an agreement or a modification or supplement to an existing agreement or both a modification and a supplement with the appropriate officers of the federal government, pursuant to section 218 of the Social Security Act, to secure coverage thereunder for the retirement system with respect to which certification has been made. An agreement may be made retroactive to the extent permissible under the Social Security Act.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(4).

19-1-825. Collection of contributions. (1) The fiscal officer for an institution for whose retirement system an agreement has been made shall collect the contributions required by section 218, as follows:

(a) from the teachers in the retirement system of that institution, by payroll deductions; and

(b) from the state, from any appropriations to the institution involved for salaries or other purposes.

(2) In the absence of a specific provision in the appropriations for or budget of an institution for such contributions, the board of regents of higher education shall designate the funds from which the required contributions will be made and the budgetary items to which they will be allocated.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(5), (6).

19-1-826. Changes in federal law. In the event that any relevant provisions of federal law are amended or superseded, then the provisions hereof which relate to such law shall be applied to the amended law or the superseding law.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(7).

CHAPTER 2

PUBLIC EMPLOYEES' RETIREMENT ACT
GENERAL PROVISIONS

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(Renumbered and Repealed)

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19-2-1003. Transfer of dormant, nonvested member-accumulated contributions.
19-2-1004. Exemption from taxes and legal process.
19-2-1005. Compensation limit.
19-2-1006. Use of forfeitures.
19-2-1007. Required distributions.
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Part 1

General Provisions (Renumbered by Code Commissioner, 1993)

Part Compiler's Comments

Sections Renumbered:

19-2-101. Renumbered 19-50-101.

19-2-102. Renumbered 19-50-102.

19-2-103. Renumbered 19-50-103.

Part 2

Administration (Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

19-2-201. Renumbered 19-50-201 by Code Commissioner, 1993.

19-2-202. Renumbered 19-50-202 by Code Commissioner, 1993.

19-2-203. Renumbered 19-50-203 by Code Commissioner, 1993.

19-2-204. Renumbered 19-50-204 by Code Commissioner, 1993.

19-2-205. Repealed. Sec. 10, Ch. 472, L. 1981.

19-2-206. Renumbered 19-50-206 by Code Commissioner, 1993.

Histories of Repealed Sections:

19-2-205. En. 68-2708 by Sec. 8, Ch. 264, L. 1974; amd. Sec. 3, Ch. 60, L. 1977; R.C.M. 1947, 68-2708.

Part 3

General Provisions

19-2-301. Short title. This chapter may be cited as "The Public Employees' Retirement Act".

History: En. Sec. 1, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-302. Applicability. This chapter applies to the provisions and administration of the retirement systems under chapters 3, 5 through 9, and 13 of this title.

History: En. Sec. 2, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is an employee of an employer and who is making the required contributions to the system based on the member's compensation paid by the employer.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the

benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit provided by a system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing annuity after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member to receive any survivorship benefits or lump-sum payments upon the death of the member, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Division" means the public employees' retirement division of the department of administration.

(17) "Employee" means a person who is employed by an employer in any capacity and whose salary is paid by the employer.

(18) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

(19) "Fiscal year" means any year commencing with July 1 and ending the following June 30.

(20) "Inactive member" means a member who has terminated service with an employer and has not withdrawn the member's accumulated contributions from the retirement system.

(21) "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

(22) "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(23) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a system.

(24) "Pension" means payments for life derived from contributions to a system made from state- or employer-controlled funds.

(25) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

(26) "Regular contributions" means contributions required from members under a retirement system.

(27) "Regular interest" means interest at the rate set from time to time by the board.

(28) "Retirement" or "retired" means the status of a member who has terminated from service with a retirement benefit under a retirement system.

(29) "Retirement benefit" means the periodic benefit payable following service, early, or disability retirement under a retirement system.

(30) "Retirement system" means one of the public employee retirement systems enumerated in 19-2-302.

(31) "Service" means employment of an employee in a position covered by a retirement system.

(32) "Supplemental cost" means an element of the total actuarial cost of a system arising from benefits payable for service performed prior to the inception of the system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

(33) "Survivorship benefit" means payments for life to the beneficiary of a deceased member who died while in service under a retirement system.

(34) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(35) "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

(36) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary.

History: En. 68-1503 by Sec. 4, Ch. 323, L. 1973; amd. Sec. 1, Ch. 190, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 8, Ch. 332, L. 1977; R.C.M. 1947, 68-1503; amd. Sec. 3, Ch. 114, L. 1979; amd. Sec. 1, Ch. 496, L. 1981; amd. Sec. 2, Ch. 282, L. 1983; amd. Sec. 1, Ch. 45, L. 1987; amd. Sec. 2, Ch. 71, L. 1989; amd. Sec. 3, Ch. 265, L. 1993; Sec. 19-3-104, MCA 1991; redes. 19-2-303 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in introduction inserted reference to retirement systems; inserted definitions of active member, actuarial cost, actuarial liabilities, contingent annuitant, department, designated beneficiary, Division, inactive member, normal cost or future normal cost, pension trust fund, regular contributions, supplemental cost, unfunded actuarial liabilities or unfunded liabilities, and vested member or vested; substituted definition of accumulated contributions for former definition that read: ""Accumulated contributions" means the sum of all the contributions standing to the credit of a member's individual account, together with the regular interest thereon"; substituted definition of additional contributions for former definition that read: ""Additional contributions" means contributions by members under the provisions of 19-3-702"; substituted definition of annuity for former definition that read: ""Annuity" means payments for life derived from contributions made by a member as provided in this chapter"; deleted definition of beneficiary that read: ""Beneficiary" means the person so designated pursuant to part 13 of this chapter"; substituted definition of benefit for former definition that read: ""Benefit" means the retirement allowance, survivorship allowance, death benefit, or refund of accumulated contributions provided by this chapter"; deleted definition of compensation that read: ""Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislature of Montana for any year shall be considered to be that portion of the product of the daily compensation for such position multiplied by 360 upon which such member elects to pay normal contributions during the year"; deleted definition of contracting employer that read: ""Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system"; substituted definition of credited service or service credit for former definition of creditable service that read: ""Creditable service" means the aggregate of membership service and prior service"; substituted definition of disability for former definition that read: ""Disability" and "incapacity for performance of duty", referred to herein as a basis of retirement, mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion"; substituted definition of employee for former definition that read: ""Employee" means any person who is employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person considered such pursuant to 19-3-402"; substituted definition of employer for former definition that read: ""Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units thereof for the purposes of this chapter, or any political subdivision or governmental entity which has contracted to come into the system"; deleted definition of employer contributions that read: ""Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to 19-3-801 and from contracting employers pursuant to the contracts between them and the board"; deleted definition of final compensation that read: ""Final compensation", except as provided in 19-3-907, means a member's highest average annual compensation during any 3 consecutive years of membership service. Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation"; deleted definition of head of department that read: ""Head of department" means the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the department of administration, state auditor, and state treasurer for payment"; substituted definition of member for former definition that read: ""Member" means any person included in the membership of the retirement system set forth in 19-3-401 and not excluded in 19-3-402, 19-3-403, or 19-3-406"; substituted definition of membership service or years of service for former definition that read: ""Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislature of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to subsection (9) of this section"; deleted definition of normal contributions that read: ""Normal contributions" means contributions required from members under this chapter and any optional contributions made under the provisions of 19-3-502 and 19-3-704"; substituted definition of pension for former definition that read:

""Pension" means payments for life derived from contributions made from the state controlled funds or, in the case of members from contracting employers, from the funds of such contracting employers, as provided in this chapter"; deleted definition of prior service that read: ""Prior service" means all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of Montana"; substituted definition of retirement or retired for former definition that read: ""Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this chapter"; substituted definition of retirement benefit for former definition of retirement allowance that read: ""Retirement allowance" means the periodic benefit payable following service, early, or disability retirement"; deleted definition of retirement fund that read: ""Retirement fund" means the public employees' retirement system pension trust fund"; substituted definition of retirement system for former definition that read: ""Retirement system" means the public employees' retirement system created by this chapter"; substituted definition of service for former definition that read: ""Service" means employment of an employee, except as provided in 19-3-501 and 19-3-502"; substituted definition of survivorship benefit for former definition of survivorship allowance that read: ""Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in part 12 of this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

Part 4
Administration

19-2-401. Location of board — quorum — officers and employees. (1) The board shall maintain its office in the city of Helena.

(2) A quorum of the board is three members.

(3) The board shall elect one of its members presiding officer. The board may appoint a committee of one or more of its members to perform routine acts, such as retirement of members and fixing of retirement benefits, approval of death claims, and correction of records necessary in the administration of the systems in accordance with the provisions of chapters 3, 5 through 9, 12, 13, and 15 of this title and in accordance with the rules of the board. The attorney general is the legal counsel for the board.

History: En. 68-1801 by Sec. 18, Ch. 323, L. 1973; R.C.M. 1947, 68-1801; amd. Sec. 4, Ch. 265, L. 1993; Sec. 19-3-301, MCA 1991; redes. 19-2-401 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (3), in second sentence after "members", deleted "which shall have authority", after "retirement" substituted "benefits" for "allowances", substituted "systems" for "system", and substituted reference to enumerated chapters for "this chapter"; deleted (4) that read: "(4) The department of administration shall appoint and fix the compensation of the administrator and other necessary employees"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-402. Compensation of board members. Members shall be entitled to compensation as provided in 2-15-124.

History: En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part); amd. Sec. 2, Ch. 672, L. 1983; amd. Sec. 5, Ch. 650, L. 1985; Sec. 19-3-302, MCA 1991; redes. 19-2-402 by Sec. 238, Ch. 265, L. 1993.

19-2-403. Powers and duties of board. (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems.

(5) The board shall determine and may modify retirement benefits under the retirement systems.

(6) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial tables and rates of regular interest it determines appropriate for the administration of the retirement systems.

(9) The board shall review the sufficiency of benefits paid by the retirement system and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(1); amd. Sec. 5, Ch. 265, L. 1993; amd. Sec. 1, Ch. 481, L. 1993; Sec. 19-3-304, MCA 1991; redes. 19-2-403 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 265 inserted (1) relating to chapters administered by the Board; in (2) substituted "systems" for "system" and at end substituted "enforcement of the chapters under which each retirement system is established" for "enforcement of this chapter, subject to its limitation"; in (3), before "credit", inserted "service"; in (4), at end of first sentence, substituted "each retirement system" for "this chapter" and in second sentence, after "authority", deleted "under this chapter" and at end substituted "systems" for "system"; in (5) substituted "modify retirement benefits under the retirement systems" for "modify allowances for service and disability under this chapter"; substituted (6) requiring uniform and nondiscriminatory treatment for "All persons in similar circumstances shall be treated alike"; at end of (7) substituted "the retirement systems" for "this chapter"; at end of (8) substituted "appropriate for the administration of the retirement systems" for "appropriate to comply with the provisions of this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 481 inserted (9) requiring Board to review sufficiency of benefits paid by retirement system and to recommend to Legislature changes that may be necessary for retired members and their beneficiaries to maintain stable standard of living; and made minor changes in style.

19-2-404. Appointment and compensation of administrative staff. The department shall appoint and fix the compensation of an administrator and other necessary employees to assist the board in administering the retirement systems.

History: En. Sec. 6, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-405. Employment of actuary — biennial investigation and valuation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical advisor of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make a biennial actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to the retirement system, must be calculated as that level percentage of members' salaries that will actuarially fund benefits payable under a retirement system as those benefits accrue in the future.

(4) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement system, must be calculated as that level percentage of members' salaries that will amortize the unfunded actuarial liabilities of the retirement system over a reasonable period of time, not to exceed 30 years, as determined by the board.

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems.

History: En. 68-1804 by Sec. 21, Ch. 323, L. 1973; R.C.M. 1947, 68-1804; amd. Sec. 7, Ch. 265, L. 1993; Sec. 19-3-305, MCA 1991; redes. 19-2-405 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in first sentence after "retain", deleted "on a full-time basis" and substituted "an enrolled member" for "a member" and in second sentence, at end, substituted "retirement systems" for "system"; in (2), at beginning, substituted "The board shall require the actuary to make a biennial actuarial investigation" for "Biennially he shall make an actuarial investigation", in two places substituted references to retirement systems for references to system, and deleted last two sentences that read: "From time to time, he shall also determine the rate of interest being earned on the retirement fund. He shall report his findings to the board"; inserted (3) relating to calculation of normal cost contribution rate; inserted (4) relating to calculation of unfunded liability contribution rate; inserted (5) relating to periodic actuarial investigation; and made minor changes in style. Amendment effective July 1, 1993.

19-2-406. Determination of disability by board. (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement.

(2) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

History: En. Sec. 1, Ch. 597, L. 1981; amd. Sec. 8, Ch. 265, L. 1993; Sec. 19-5-611, MCA 1991; redes. 19-2-406 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) deleted last sentence that read: "The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice"; inserted (2) relating to retention of medical personnel; and made minor changes in style. Amendment effective July 1, 1993.

19-2-407. Report by division to governor. As soon as practical after the close of each fiscal year, the division shall file with the governor a report of its work for that fiscal year. The report must include a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments. The report must also include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of each system.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(2); amd. Sec. 9, Ch. 265, L. 1993; Sec. 19-3-306, MCA 1991; redes. 19-2-407 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence substituted "division" for "department of administration" and in second sentence substituted "pension trust funds" for "retirement fund"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system, except as provided in subsection (3). Before the fiscal yearend closing, the board shall compute the administrative expenses attributable to each retirement system administered by the board for the immediately preceding fiscal year and transfer that amount from each retirement system's pension trust fund to the pension trust fund of the public employees' retirement system.

(3) On January 1 of each year, each employer under the public employees' retirement system shall contribute on behalf of each member then in its service a membership fee of $1 in addition to other required contributions. The appropriation of these fees, together with other money appropriated for that purpose, must be used for the purpose of defraying the administrative expense of chapters 3, 5 through 9, 13, and this chapter.

(4) Any request for an increase in spending authority for administrative expenses requires a budget amendment and is subject to Title 17, chapter 7, part 4.

(5) The board may assess and the division may collect a fee from the department of fish, wildlife, and parks for the purpose of defraying the expenses of administering chapter 8 of this title.

History: En. 68-1904 by Sec. 25, Ch. 323, L. 1973; amd. Sec. 3, Ch. 190, L. 1974; amd. Sec. 6, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1904; amd. Sec. 2, Ch. 254, L. 1981; amd. Sec. 5, Ch. 496, L. 1981; amd. Sec. 1, Ch. 328, L. 1985; amd. Sec. 3, Ch. 4, Sp. L. June 1986; amd. Sec. 10, Ch. 265, L. 1993; Sec. 19-3-805, MCA 1991; redes. 19-2-408 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) substituted "pension trust funds" for "retirement fund"; in (2), at beginning of first sentence, deleted "Effective July 1, 1986" and near end substituted "investment earnings on the pension trust fund of the public employees' retirement system" for "income earnings on the retirement fund" and at beginning of second sentence inserted introductory clause, near middle, after "board", inserted "for the immediately preceding fiscal year", before "retirement system's" substituted "each" for "the", and at end substituted "pension trust fund of the public employees' retirement system" for "retirement fund"; in (3), in first sentence, deleted introductory clause that read: "In addition to the contributions elsewhere provided in this chapter", after "employer" inserted "under the public employees' retirement system", substituted "service" for "employ", and after "$1" inserted "in addition to other required contributions" and in second sentence, at end, inserted reference to other chapters; inserted (5) relating to collection of a fee from Department of Fish, Wildlife, and Parks; and made minor changes in style. Amendment effective July 1, 1993.

Part 5

Management and Investment of Pension Trust Funds

19-2-501. Pension trust funds established. A pension trust fund is established and maintained for each retirement system subject to this chapter as enumerated in 19-2-302.

History: En. Sec. 11, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-502. Statutory appropriation of payments from pension trust funds. Assets of the pension trust funds are statutorily appropriated, as provided in 17-7-502, to the division for payment of benefits and refunds to eligible recipients and for paying the necessary administrative and investment expenses of the retirement systems, subject to the specific provisions of chapters 3, 5 through 9, and 13 of this title.

History: En. Sec. 12, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-503. Management of pension trust funds. The pension trust funds must be managed as follows:

(1) The board is the trustee of all money collected for the retirement systems and has exclusive control of the administration of the pension trust funds except as otherwise provided by law.

(2) The department shall deposit in the state treasury all amounts received by it as provided in this chapter.

(3) The state treasurer is custodian of the pension trust funds, subject to the exclusive control of the board for administration and the board of investments for the investment of the funds.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(1), (3), (4); amd. Sec. 13, Ch. 265, L. 1993; Sec. 19-3-601, MCA 1991; redes. 19-2-503 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to pension trust funds for references to retirement fund; in (1) substituted "systems" for "system"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-504. Investment of pension trust funds. (1) The pension trust funds of the retirement systems must be invested by the state board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the pension trust funds must be paid into the appropriate pension trust funds as received.

(3) The pension trust funds may be commingled for investment purposes, but separate accounts must be maintained for each system.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(2), (5); amd. Sec. 1, Ch. 221, L. 1991; amd. Sec. 14, Ch. 265, L. 1993; Sec. 19-3-602, MCA 1991; redes. 19-2-504 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) and in two places in (2) substituted references to pension trust funds for references to fund; and inserted (3) relating to commingling of funds and separate accounts. Amendment effective July 1, 1993.

19-2-505. Restrictions on use of funds. (1) Except as provided in this section, a member or an employee of the department or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the division; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds.

(2) The assets of the retirement systems may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(6), (7); amd. Sec. 2, Ch. 4, Sp. L. June 1986; amd. Sec. 15, Ch. 265, L. 1993; Sec. 19-3-603, MCA 1991; redes. 19-2-505 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) inserted reference to Board of Investments; at end of (1)(c) substituted "division" for "department"; at end of (1)(d) substituted "pension trust funds" for "retirement system"; in (2), near beginning, substituted "systems" for "system"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-506. Payment of contributions by employers — accompanying reports — penalty. (1) At a time prescribed by the rules of the board, each employer shall remit to the division all contributions required of the employer and its employees under retirement systems subject to this chapter on the basis of covered compensation paid during the previous pay period.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) Employers shall submit reports of their covered payroll and contributions remitted as the board requires by rule.

(4) The chief administrative officer of each employer shall furnish monthly reports to the board showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death. The chief administrative officer shall furnish additional information concerning the members that the board may require in the administration of the retirement systems, including the services of the employer's office and departments that the board may request in connection with claims by members for benefits under the retirement systems.

History: En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(1); amd. Sec. 1, Ch. 348, L. 1979; amd. Sec. 1, Ch. 138, L. 1991; amd. Sec. 16, Ch. 265, L. 1993; Sec. 19-3-802, MCA 1991; redes. 19-2-506 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) substituted "each employer" for "each agency of the state", substituted "division" for "public employees' retirement system", after "under" inserted "retirement systems subject to", before "compensation" inserted "covered", and at end, after "period", deleted "including any contributions payable with respect to members absent in the armed forces of the United States"; in (2), in first sentence after "whichever is greater", deleted "from the appropriation account of the reporting agency by submission of a claim to the state treasurer", in second sentence, before "penalty", deleted "interest", and inserted last clause concerning collection; inserted (2)(a) relating to court action; inserted (2)(b) relating to deductions; inserted (4) relating to monthly reports and additional information; and made minor changes in style. Amendment effective July 1, 1993.

19-2-507. Transfer between funds. Any pension trust fund out of which payments are made under the provisions of this title may be reimbursed to the extent of the payments by transfer of a sufficient sum for the reimbursement from another pension trust fund or funds under the control of the division. The division shall certify to the department the amounts to be transferred and the funds from and to which the transfer is to be made, and the division shall make the transfer as directed in the certificate.

History: En. 68-2506 by Sec. 54, Ch. 323, L. 1973; amd. Sec. 12, Ch. 99, L. 1977; R.C.M. 1947, 68-2506; amd. Sec. 3, Ch. 496, L. 1981; amd. Sec. 17, Ch. 265, L. 1993; Sec. 19-3-605, MCA 1991; redes. 19-2-507 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in two places substituted "pension trust fund" for "fund"; in two places substituted "division" for "disbursing officer"; in first sentence, after "provisions of", substituted "this title" for "this chapter"; near end substituted "division" for "department"; and made minor changes in style. Amendment effective July 1, 1993.

Part 6

Termination of Membership and Refunds

19-2-601. Termination of membership. If a member's accumulated contributions under a retirement system are refunded, the person ceases to be a member of that system, all the person's service is canceled, and the person relinquishes claim to any benefits payable to members of the retirement system.

History: En. 68-1603 by Sec. 7, Ch. 323, L. 1973; R.C.M. 1947, 68-1603; amd. Sec. 18, Ch. 265, L. 1993; Sec. 19-3-406, MCA 1991; redes. 19-2-601 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section regarding termination of membership for former section that read: "If any part of a member's accumulated normal contributions is refunded pursuant to 19-3-703, he ceases to be a member and all membership service to his credit is canceled.

Any person who is retired ceases to be a member." Amendment effective July 1, 1993.

19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member whose service has been discontinued, other than by death or retirement, must be paid the member's accumulated contributions at the member's request.

(2) Upon the written request of a terminating member, the division shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31) of the eligible portion of a refund of the member's accumulated contributions. The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The terminating member shall designate the eligible retirement plan on forms provided by the division. Amounts of the member's accumulated contributions that are not eligible for direct rollover distribution must be paid to the terminating member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution.

(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member withdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.

(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the division to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.

(5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the member's written request.

History: En. 68-1905 by Sec. 26, Ch. 323, L. 1973; amd. Sec. 6, Ch. 128, L. 1975; R.C.M. 1947, 68-1905; amd. Sec. 1, Ch. 107, L. 1979; amd. Sec. 4, Ch. 496, L. 1981; amd. Sec. 19, Ch. 265, L. 1993; Sec. 19-3-703, MCA 1991; redes. 19-2-602 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (2) substituted present subsection regarding direct rollover distribution for former subsection that read: "Upon qualification for any other benefit under this chapter, a member having any accumulated contributions standing to his credit in the retirement fund shall receive the benefit based upon the creditable service during which such contributions were made"; at end of (3) substituted "the pension trust fund" for "the retirement fund as provided in 19-3-704"; in second sentence of (4) substituted "division" for "department of administration"; inserted (5) relating to repayment of additional contributions; and made minor changes in style. Amendment effective July 1, 1993.

19-2-603. Reinstatement after withdrawal of contributions. (1) Except as otherwise provided in this section, any person who again becomes a member subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without credit for any previous membership service. The person may reinstate that membership service by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions had the refund not taken place. If the person makes this redeposit, the service credits previously canceled must be reinstated.

(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership must be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents continue unchanged until changed as provided in this section.

History: En. 68-1906 by Sec. 27, Ch. 323, L. 1973; amd. Sec. 7, Ch. 128, L. 1975; R.C.M. 1947, 68-1906; amd. Sec. 20, Ch. 265, L. 1993; Sec. 19-3-704, MCA 1991; redes. 19-2-603 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in two places, substituted "accumulated contributions" for "accumulated normal contributions", near end of second sentence substituted "accumulated contributions" for "account", and substituted last sentence relating to reinstatement of service credits for former sentence that read: "If he makes this redeposit, his membership shall be the same as if unbroken by such last termination"; and made minor changes in style. Amendment effective July 1, 1993.

Part 7

Service Credit and Additional Contributions

19-2-701. Service credit. Subject to the provisions of chapters 3, 5 through 9, and 13 of this title, a member must receive 1 month of service credit for each full month of service under rules adopted by the board. Service credits must be used in calculating a retirement or survivorship benefit.

History: En. Sec. 21, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-702. Membership service. A member must receive membership service for all periods of service, regardless of hours worked or compensation received during that service. The service must be used to determine:

(1) whether a member is vested;

(2) when the member is eligible for early or normal service retirement or disability retirement; or

(3) the eligibility of beneficiaries for survivorship benefits.

History: En. Sec. 22, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-703. No duplication of benefits for same period of service. A period of service of the member may not be credited in more than one retirement system enumerated in 19-2-302 for purposes of calculation of retirement allowances.

History: En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(2); amd. Sec. 23, Ch. 265, L. 1993; Sec. 19-3-508, MCA 1991; redes. 19-2-703 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section relating to duplication of benefits for former section that read: "There may not be any duplication of retirement allowances to a member or beneficiary due to there being more than one period of service of the member." Amendment effective July 1, 1993.

19-2-704. Purchasing service credits allowed. Subject to the rules promulgated by the board, an eligible member may elect to contribute amounts in addition to the mandatory employee contributions required by the retirement system in which the member participates for the purpose of purchasing service credits as provided by the statutes governing the retirement system.

History: En. 68-1903 by Sec. 24, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1903; amd. Sec. 24, Ch. 265, L. 1993; Sec. 19-3-702, MCA 1991; redes. 19-2-704 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section relating to purchase of service credits for former section that read: "Subject to the rules promulgated by the board, any member may elect to contribute at rates in excess of those provided for in 19-3-701 for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting employer any additional financial obligation. The board, upon application, shall furnish to the member information concerning the nature and amount of additional benefits to be provided by additional contributions." Amendment effective July 1, 1993.

19-2-705. Absence in military service. (1) Any period of absence from service for one of the following reasons, occurring either during a war involving the United States as a belligerent or during any other national emergency and 90 days after the service, is considered membership service only for the purpose of qualification for retirement and survivorship benefits but not for calculation of service credit:

(a) by reason of having been ordered on duty with the armed forces of the United States;

(b) by reason of voluntary service in the armed forces or on ships operated by or for the United States government; or

(c) by reason of direct assignment to the department of defense for duties pursuant to the national defense efforts where a leave of absence has been granted by the employer.

(2) Any member absent as provided in subsection (1) may contribute to the retirement system, either during the member's period of absence or upon the member's return to service, at times and in the manner fixed by the board, amounts equal to the contributions that would have been made by the member to the system on the basis of the member's compensation at the commencement of the member's absence. If the member does contribute, the member must receive service credit for the time in the same manner as if the member had not been absent from service. Whenever a member elects to continue the member's contributions, the employer shall contribute an amount equal to

what its employer contributions would have been had the member not been absent from service.

(3) Any member absent as provided in subsection (1) loses the right to contribute under this section if the member's accumulated contributions are refunded pursuant to 19-2-602.

History: En. 68-1605 by Sec. 9, Ch. 323, L. 1973; amd. Sec. 3, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1605; amd. Sec. 25, Ch. 265, L. 1993; Sec. 19-3-502, MCA 1991; redes. 19-2-705 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), near beginning, substituted "service" for "compensated employment with an employer", substituted "considered membership service only" for "considered service", substituted "survivorship benefits" for "death benefits", and substituted "service credit" for "retirement benefits"; in (2), near beginning, substituted "as provided in subsection (1) may" for "has the right to"; in (3), after "absent", inserted "as provided in subsection (1)" and at end substituted "accumulated contributions" for "accumulated normal contributions"; and made minor changes in style. Amendment effective July 1, 1993.

Part 8

Beneficiaries

19-2-801. Designation of beneficiary. In the absence of any statutorily designated persons, the beneficiaries of a member are the natural persons, charitable organizations, or trusts for the benefit of natural living persons that the member designates on the membership card. Unless otherwise provided by statute, a member may revoke the designation and name different beneficiaries by filing a new membership card with the board.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part); amd. Sec. 10, Ch. 496, L. 1981; amd. Sec. 1, Ch. 154, L. 1985; amd. Sec. 26, Ch. 265, L. 1993; Sec. 19-3-1301, MCA 1991; redes. 19-2-801 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section relating to designation of beneficiary for former section that read: "The beneficiaries of a member shall be such natural persons, charitable organizations, or trusts for the benefit of natural living persons as the member shall designate in the appropriate written application. A member may revoke such designation and name different beneficiaries by filing written notice with the board." Amendment effective July 1, 1993.

19-2-802. Effect of no designation. (1) If a living beneficiary, existing charitable organization, or natural living person who is the beneficiary of a trust is not designated, the estate of the member is the designated beneficiary. If the estate would not be probated but for the amount due from the retirement system, all of the amount due, including retirement benefits accrued but not received prior to death, must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

(a) husband or wife;
(b) children;
(c) father and mother;
(d) grandchildren;
(e) brothers and sisters; or
(f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the retirement division, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's death.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part); amd. Sec. 2, Ch. 154, L. 1985; amd. Sec. 27, Ch. 265, L. 1993; Sec. 19-3-1302, MCA 1991; redes. 19-2-802 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), near end of first sentence before "beneficiary", inserted "designated" and in second sentence, after "including retirement", substituted "benefits" for "allowances"; in first sentence of (3), after "groups", inserted "listed in subsection (2)" and in second sentence substituted "division" for "board"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-803. Payment to custodian of minor beneficiary. (1) If any benefit from a system is payable to a minor, the benefit must be paid to one of the following:

(a) a surviving parent, if any;

(b) a parent awarded custody of the minor in a divorce proceeding;

(c) a custodian designated under Title 72, chapter 26;

(d) a guardian appointed pursuant to Title 72, chapter 5, part 2; or

(e) a conservator appointed pursuant to Title 72, chapter 5, part 4.

(2) The payment must be in full and complete discharge and acquittance of the board and system on account of the benefit. The person shall account to the minor for the money when the minor reaches the age of majority.

History: En. 68-2402 by Sec. 48, Ch. 323, L. 1973; R.C.M. 1947, 68-2402; amd. Sec. 11, Ch. 496, L. 1981; amd. Sec. 28, Ch. 265, L. 1993; Sec. 19-3-1304, MCA 1991; redes. 19-2-803 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) substituted "a system" for "the system"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-804. Limitations on payment of benefits to a person causing a member's death or disability. If a person is convicted of knowingly, purposely, or intentionally causing a member's death or disability, that person may not receive benefits or payments from a retirement system and the benefits must be payable as otherwise provided in statute.

History: En. Sec. 1, Ch. 153, L. 1985; amd. Sec. 29, Ch. 265, L. 1993; Sec. 19-3-1305, MCA 1991; redes. 19-2-804 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section relating to limitations on payment of benefits for former section that read: "(1) If a member's beneficiary is convicted of knowingly, purposely, or intentionally causing the member's death, the beneficiary is not entitled to receive benefits as the member's beneficiary, and, except as provided in subsection (2), the benefits must be payable as provided in 19-3-1302.

(2) In lieu of the payment of benefits as provided in subsection (1), the board may grant a survivorship allowance in the amount provided for in 19-3-1205 to the member's surviving next of kin other than the beneficiary who caused the member's death. Determination of the surviving next of kin must be made according to the order provided in 19-3-1302(2)." Amendment effective July 1, 1993.

Cross-References

Deliberate homicide, 45-5-102.

Homicide — effect on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations, 72-2-813.

Part 9

Management of Benefit Payments

19-2-901. Estimate of benefit when information incomplete. If it is impracticable for the board to determine from the records the length of service, the compensation, or the age of a member or if a member refuses or fails to give the board a statement of the member's state service, compensation, or age, the board may estimate, for the purposes of this title, the length of service, compensation, or age.

History: En. 68-2503 by Sec. 51, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2503; amd. Sec. 30, Ch. 265, L. 1993; Sec. 19-3-1401, MCA 1991; redes. 19-2-901 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 near end substituted "this title" for "this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-902. Frequency of benefit payments. A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter must be payable in monthly installments, except that the board may elect to convert payments of at least $20 per year to a single sum of actuarial equivalent value. A smaller pro rata amount may be paid for part of a month when the retirement benefit ends before the last day of the month.

History: En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(1); amd. Sec. 31, Ch. 265, L. 1993; Sec. 19-3-1402, MCA 1991; redes. 19-2-902 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section relating to frequency of benefit payments for former section that read: "A retirement allowance or survivorship allowance granted under the provisions of this chapter shall be payable in monthly installments, except that the board, at its discretion, may convert payments of less than $20 per month to larger periodic payments which are the actuarial equivalent of such smaller payments but which occur less frequently. If payments of at least $20 per year are not so payable, the payment may be commuted into a single sum. A smaller pro rata amount may be paid for part of a month when the retirement allowance ends before the last day of the month." Amendment effective July 1, 1993.

19-2-903. Adjustment of errors in payments. (1) If more or less than the correct amount of contribution required by a retirement system subject to this chapter is or has been paid, proper adjustment must be made in connection with the subsequent payments or the adjustments may be made by direct cash payments between the member, state, or contracting employer in connection with whom the error was made and the board.

(2) If any fraudulent change or any inadvertent mistake in records results in any member, survivor, or beneficiary receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, survivor, or beneficiary in an equitable manner.

History: En. 68-2509 by Sec. 57, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2509; amd. Sec. 32, Ch. 265, L. 1993; Sec. 19-3-1403, MCA 1991; redes. 19-2-903 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), near beginning, substituted "required by a retirement system subject to this chapter" for "required by this chapter of a member, the state, or a contracting employer" and deleted last sentence that read: "Adjustments to correct any other errors in payments to or by the board may be made in the same manner"; inserted (2) relating to adjustments for fraudulent changes and inadvertent mistakes; and made minor changes in style. Amendment effective July 1, 1993.

19-2-904. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 68-2502.1 by Sec. 7, Ch. 214, L. 1977; R.C.M. 1947, 68-2502.1; Sec. 19-3-1404, MCA 1991; redes. 19-2-904 by Sec. 238, Ch. 265, L. 1993.

19-2-905. Payments under workers' compensation. All payments provided for in this chapter, except as otherwise provided, are in addition to any other benefits provided for under the Workers' Compensation Act of the state of Montana.

History: En. 68-2625 by Sec. 25, Ch. 178, L. 1974; R.C.M. 1947, 68-2625; amd. Sec. 33, Ch. 265, L. 1993; Sec. 19-7-103, MCA 1991; redes. 19-2-905 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted "except as otherwise provided" for "except as provided in 19-7-604" and after "benefits" deleted "now or hereafter". Amendment effective July 1, 1993.

19-2-906. Limitations on disability or survivorship benefits. If the board determines that a member's disability or death is proximately caused by the gross negligence, willful misconduct, or violation of the law by the member, the board may revoke, suspend, or refuse to grant benefits except an annuity that is the actuarial equivalent of the member's accumulated contributions with regular interest to the day the benefit commences.

History: En. 11-1887 by Sec. 28, Ch. 456, L. 1977; R.C.M. 1947, 11-1887; amd. Sec. 34, Ch. 265, L. 1993; Sec. 19-9-1004, MCA 1991; redes. 19-2-906 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section regarding limitations on disability or survivorship benefits for former section that read: "The board may revoke, refuse to grant, or suspend a member's annuity for disability or death caused by wrongful conduct. If the disability causing a member to retire or the death of a member is directly and proximately caused by the member's immoral or intemperate conduct or gross negligence, the board may refuse to grant, revoke, or suspend the employer annuity." Amendment effective July 1, 1993.

19-2-907. Alternate payees — family law orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, 17, or 20; and

(b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(5) A family law order may only provide for payment to an alternate payee as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for that option.

(6) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

History: En. Sec. 1, Ch. 259, L. 1993.

Compiler's Comments

Coordination Instruction: Section 11, Ch. 259, L. 1993, provided: "If Senate Bill No. 385 is passed and approved, [section 1] [19-2-907] is to be codified only as an integral part of the general retirement provisions and the bracketed language in [section 1] [19-2-907] replaces the references to the enumerated chapters of Title 19." Senate Bill No. 385 was passed and approved as Ch. 265, L. 1993; therefore, the reference to enumerated chapters of Title 19 in 19-2-907(2)(a) was codified as instructed.

Part 10
Special Provisions

19-2-1001. Maximum benefit limitation. A monthly benefit paid under the retirement systems may not exceed the annual limits on benefits as specified in section 415 of the Internal Revenue Code of 1986 and adjusted annually by the commissioner of internal revenue.

History: En. Sec. 1, Ch. 14, L. 1987; amd. Sec. 35, Ch. 265, L. 1993; Sec. 19-3-107, MCA 1991; redes. 19-2-1001 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 near beginning substituted "retirement systems" for "retirement system provided for in this chapter" and at end, after "revenue", deleted "for calendar years 1988 and thereafter"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-1002. Vesting of retirement benefits upon termination of system. Upon termination of a retirement system, termination of employment of a substantial number of members that would constitute a partial termination of the retirement system, or complete discontinuance of contributions to that retirement system, the retirement benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(8); amd. Sec. 36, Ch. 265, L. 1993; Sec. 19-3-606, MCA 1991; redes. 19-2-1002 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 near middle substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-1003. Transfer of dormant, nonvested member-accumulated contributions. The board may, in its discretion, transfer the accumulated contributions of a nonvested member to the pension trust fund of the system in which the member is participating if the member has not participated in the plan as an employee for a period of 10 years. Rights of the member may not be jeopardized by the transfer, and the accumulated contributions must be transferred to the member's name upon subsequent return to service or subsequent application for refund.

History: En. 68-1907 by Sec. 28, Ch. 323, L. 1973; R.C.M. 1947, 68-1907; amd. Sec. 37, Ch. 265, L. 1993; Sec. 19-3-604, MCA 1991; redes. 19-2-1003 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in two places substituted "accumulated contributions" for "savings account"; in first sentence, before "member", inserted "nonvested" and substituted "pension trust fund of the system in which the member is participating if the member has not participated in the plan as an employee" for "pension accumulation fund if the account has been dormant"; in second sentence, at end, substituted "return to service or subsequent application for refund" for "reentry to membership"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-1004. Exemption from taxes and legal process. Except as provided in 19-2-907, the right of a person to any benefit or payment from the retirement systems and the money in the pension trust funds is not:

(1) subject to execution, garnishment, attachment, or any other process;
(2) subject to state, county, or municipal taxes except for:

(a) a benefit or annuity received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

(3) assignable except as specifically provided in this chapter.

History: En. 68-2502 by Sec. 50, Ch. 323, L. 1973; R.C.M. 1947, 68-2502; amd. Sec. 3, Ch. 464, L. 1985; amd. Sec. 6, Ch. 823, L. 1991; amd. Sec. 2, Ch. 259, L. 1993; amd. Sec. 38, Ch. 265, L. 1993; Sec. 19-3-105, MCA 1991; redes. 19-2-1004 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 259 at beginning inserted exception clause.

Chapter 265 in introductory clause substituted "any benefit or payment from the retirement systems" for "a retirement allowance or any other benefit under this chapter" and substituted "pension trust funds is" for "fund created under this chapter are"; in (2)(a) substituted "benefit or annuity" for "retirement allowance"; in (2)(b), after "refund", deleted "paid under 19-3-703", before "contributions" inserted "regular", and at end, after "19-3-315", inserted additional references; and made minor changes in style. Amendment effective July 1, 1993.

19-2-1005. Compensation limit. A retirement system subject to this chapter may not take into account compensation of a member in excess of the amount permitted in Internal Revenue Code section 401(a)(17).

History: En. Sec. 39, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-1006. Use of forfeitures. A retirement system subject to this chapter may not apply forfeitures of benefits to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8).

History: En. Sec. 40, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-1007. Required distributions. The benefits payable by the retirement systems subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:

(1) Benefits must begin by April 1 of the calendar year following the plan year in which the member reaches 70 1/2 years of age or retires, whichever is later.

(2) The member's entire interest in the retirement system must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and designated beneficiary.

(3) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution prior to the member's death.

(4) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within 5 years of the member's death. The 5-year payment rule does not apply to any portion of the

member's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse, payable over the life or life expectancy of the spouse, and that begins no later than the date the member would have reached 70 ½ years of age.

(5) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

History: En. Sec. 41, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-1008. Budget Act superseded. This chapter shall be valid and effective despite any provisions in the state Budget Act to the contrary.

History: En. 68-2508 by Sec. 56, Ch. 323, L. 1973; R.C.M. 1947, 68-2508; Sec. 19-3-106, MCA 1991; redes. 19-2-1008 by Sec. 238, Ch. 265, L. 1993.

19-2-1009. Penalty for fraud. A person who knowingly makes a false statement or who knowingly falsifies or permits to be falsified any record of a retirement system in an attempt to defraud the system is guilty of a misdemeanor punishable by a fine not exceeding $1,000 or imprisonment not exceeding 1 year, or both.

History: En. Sec. 23, Ch. 289, L. 1967; R.C.M. 1947, 93-1129(part); amd. Sec. 42, Ch. 265, L. 1993; Sec. 19-5-104, MCA 1991; redes. 19-2-1009 by Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section regarding penalty for fraud for former section that read: "(1) No person shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system.

(2) Any person violating any of the provisions of subsection (1) of this section shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine not exceeding $1,000 or suffer imprisonment not exceeding 1 year, or both, in the discretion of the court." Amendment effective July 1, 1993.

CHAPTER 3

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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19-3-1002. Eligibility for disability retirement.
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19-3-1109. Renumbered 19-3-1601 by Code Commissioner, 1993.
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Part 1
General Provisions

19-3-101. Short title. This chapter may be cited as "The Public Employees' Retirement System Act".

History: En. Sec. 1, Ch. 323, L. 1973; R.C.M. 1947, 68-1504.

19-3-102. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-1501 by Sec. 2, Ch. 323, L. 1973; R.C.M. 1947, 68-1501.

19-3-103. Retirement system created. A retirement system is created and established to become effective July 1, 1945, and to be known as the public employees' retirement system. The system is governed by the provisions of chapter 2 and this chapter.

History: En. 68-1502 by Sec. 3, Ch. 323, L. 1973; R.C.M. 1947, 68-1502; amd. Sec. 43, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 inserted second sentence regarding chapters applicable to system. Amendment effective July 1, 1993.

19-3-104 through 19-3-107. Renumbered. Sec. 238, Ch. 265, L. 1993.

Compiler's Comments

Sections Renumbered:

19-3-104. Renumbered 19-2-303.
19-3-105. Renumbered 19-2-1004.
19-3-106. Renumbered 19-2-1008.
19-3-107. Renumbered 19-2-1001.

19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Compensation" means remuneration paid out of funds controlled by an employer. Compensation does not include the payments or contributions made in lieu of wages for an individual subject to 19-2-405(4)(a).

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(4) "Employer contributions" means payments to the pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(5) "Final average salary", except as provided in 19-3-520, means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

History: En. Sec. 44, Ch. 265, L. 1993; amd. Sec. 12, Ch. 640, L. 1993.

Compiler's Comments

1993 Amendment: Section 12 (a coordination instruction), Ch. 640, L. 1993, in definition of final average salary, in second sentence before "sick leave", inserted "severance pay".

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 2

Extension of Coverage by Local Government Employers

19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of the contracting employer. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by ordinance adopted by the affirmative vote of two-thirds of the members of the legislative body, not less than 20 days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting on the contract.

(b) The contract must specify that all employees of the contracting employer or groups of employees as agreed to between the board and the contracting employer must become members. The groups of employees to be included must be by departments, duties, or other similar classifications and not by individual employees. The board may disapprove any classification into groups if, in its opinion, the classification affects adversely the interest of the retirement system. Membership in the retirement system is compulsory for all employees included under the contract and who are hired after the effective date of the contract.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement coverage.

(b) All employees covered under the retirement system shall receive notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, not less than 20 days after the approval of the resolution by the employees, may adopt by a 2/3 majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency.

History: En. 68-1701 by Sec. 14, Ch. 323, L. 1973; R.C.M. 1947, 68-1701; amd. Sec. 2, Ch. 496, L. 1981; amd. Sec. 45, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), at end of first sentence, deleted "subject to the provisions of this chapter" and in second sentence inserted reference to chapter 2; in (2)(b), in second sentence after "duties", deleted "age" and in fourth sentence, at end after "contract", inserted "and who are hired after the effective date of the contract"; in (3)(c) substituted "terminating coverage under the system" for "terminating PERS coverage"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-202. Request by individual employee for employer to participate. Any employee who has continuously been, for a period of at least 2 years, an employee of a municipal corporation, county, or other public agency of this state which is not a contracting employer may advise the legislative body of his employer, in writing, that he wishes to participate in the retirement system. Within 30 days after receipt of such written request, the legislative body shall thereupon adopt the resolution of intention and take such action as provided for in 19-3-201.

History: En. 68-1702 by Sec. 15, Ch. 323, L. 1973; R.C.M. 1947, 68-1702.

19-3-203. Conversion of local or state retirement plan. (1) If the legislative body of any city, county, or public agency having an existing retirement, pension, or annuity fund or system, referred to as the local system, desires to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board in the manner provided in 19-3-201. However, the employees voting as provided in 19-3-201(2)(a) shall be limited to active members of the local system, and approval shall require an affirmative vote of two-thirds of the employees.

(2) All active members of the local system shall become members of the retirement system and shall no longer be members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract must be continued and paid at their existing rates by the public employees' retirement system. The liability for the pensions must be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system must be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of the securities must be determined by the board.

(3) The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. The shares

must be charged to the employer and credited as accumulated contributions of the members in the public employees' retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with regular interest, against future required employer contributions. Any excess of employer charges over credits under this section must be payable by the contracting employer, with regular interest, on a monthly basis as specified in the contract.

History: En. 68-1703 by Sec. 16, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1703; amd. Sec. 46, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (3), in second sentence after "credited", substituted "as accumulated contributions" for "to the respective individual accounts" and in fourth sentence, near end before "interest", inserted "regular"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-204. Tax levy to meet employer's obligations. (1) If the required contributions to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer may budget, levy, and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per $100 of assessable property as is sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the retirement system. The rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied by the contracting employer.

(2) A person who is a member or designated beneficiary of the retirement system because of the participation of the contracting employer may maintain the appropriate action or proceeding to require the contracting employer to budget, levy, and collect the special tax authorized in subsection (1).

History: En. 68-1704 by Sec. 17, Ch. 323, L. 1973; R.C.M. 1947, 68-1704; amd. Sec. 4, Ch. 114, L. 1979; amd. Sec. 47, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (2), before "beneficiary", inserted "designated"; and made minor changes in style. Amendment effective July 1, 1993.

Part 3

Contributions and Refunds

19-3-301. Renumbered 19-2-401. Sec. 238, Ch. 265, L. 1993.

19-3-302. Renumbered 19-2-402. Sec. 238, Ch. 265, L. 1993.

19-3-303. Repealed. Sec. 4, Ch. 254, L. 1981.

History: En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part).

19-3-304. Renumbered 19-2-403. Sec. 238, Ch. 265, L. 1993.

19-3-305. Renumbered 19-2-405. Sec. 238, Ch. 265, L. 1993.

19-3-306. Renumbered 19-2-407. Sec. 238, Ch. 265, L. 1993.

19-3-307. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2512 by Sec. 60, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2512.

19-3-308. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

19-3-309 through 19-3-314 reserved.

19-3-315. Member's contribution to be deducted. (1) On and after July 1, 1993, the regular contribution of each member is 6.70% of the member's compensation.

(2) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(4) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. 68-1902 by Sec. 23, Ch. 323, L. 1973; amd. Sec. 5, Ch. 128, L. 1975; R.C.M. 1947, 68-1902; amd. Sec. 4, Ch. 464, L. 1985; amd. Sec. 1, Ch. 558, L. 1989; amd. Sec. 52, Ch. 265, L. 1993; Sec. 19-3-701, MCA 1991; redes. 19-3-315 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted (1) regarding regular contribution rate for former subsection that read: "(1) On and before June 30, 1989, the normal contribution of each member is 6% of his compensation. The normal contribution of each member increases to:

(a) 6.15% of his compensation on July 1, 1989;

(b) 6.30% of his compensation on July 1, 1990;

(c) 6.417% of his compensation on July 1, 1991;

(d) 6.55% of his compensation on July 1, 1992; and

(e) 6.70% of his compensation on July 1, 1993"; in (5), at end of first sentence after "compensation", deleted "as defined in 19-3-104"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-316. Employer contribution rates. Each employer shall contribute to the cost of benefits under the system. On and after July 1, 1993, the amount of the employer contributions is 6.70% of each employer's covered payroll.

History: En. 68-2504 by Sec. 52, Ch. 323, L. 1973; amd. Sec. 12, Ch. 128, L. 1975; R.C.M. 1947, 68-2504(part); amd. Sec. 1, Ch. 254, L. 1981; amd. Sec. 3, Ch. 549, L. 1981; amd. Sec. 2, Ch. 663, L. 1983; amd. Sec. 2, Ch. 558, L. 1989; amd. Sec. 53, Ch. 265, L. 1993; Sec. 19-3-801, MCA 1991; redes. 19-3-316 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section regarding employer contribution rates for former section that read: "(1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates is 6.417% from July 1, 1983, to June 30, 1992. The sum of the rates increases to 6.55% on July 1, 1992, and to 6.70% on July 1, 1993.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the 40-year period following the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons." Amendment effective July 1, 1993.

19-3-317. State employer to include costs in budget. Every state employer shall include in its budget and request for legislative appropriations an amount necessary to defray the state's part of the costs of this chapter for its employees to the end that the legislature may make definite appropriation for the cost incurred by each employer the employees of which are within the retirement system created by this chapter.

History: En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(2); Sec. 19-3-803, MCA 1991; redes. 19-3-317 by Code Commissioner, 1993.

19-3-318. Refund of employer contribution made after termination. Employer contributions on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system, as provided in 19-3-403(4), must be repaid to the employer.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(c); amd. Sec. 54, Ch. 265, L. 1993; Sec. 19-3-405, MCA 1991; redes. 19-3-318 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted reference to subsection (4) of 19-3-403 for reference to subsection (8); and made minor changes in style. Amendment effective July 1, 1993.

Part 4

Eligibility, Membership, and Vesting

19-3-401. Membership — inactive vested members — inactive nonvested members. (1) Except as otherwise provided in this chapter, all eligible employees shall become members on the first day of covered employment. Each eligible employee shall file with the board information affecting the employee's status as a member of the retirement system as the board may require.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a service retirement benefit subject to the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any

benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(4) Every employee who reenters service shall become a member unless the employee has had an original election of exemption from membership and the employee's service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership is not subject to the requirement regarding the break in service while continuing in the employee's original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, the seasonal employee shall become a member of the retirement system upon reentry.

(5) Time during which an employee of a school district is absent from service during official vacation is counted as service in determining eligibility for membership under this chapter.

History: En. 68-1601 by Sec. 5, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1601; amd. Sec. 1, Ch. 162, L. 1991; amd. Sec. 49, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), at beginning, inserted exception clause, in two places changed references to employees to references to eligible employees, and before "employment" inserted "covered"; in (2), near beginning, substituted "membership service" for "creditable service", after "terminates" substituted "service" for "covered employment", before "contributions" inserted "accumulated", after "contributions" inserted "is an inactive vested member and", after "service" inserted "and to receive a service retirement benefit", and before "this chapter" deleted "part 5 of"; deleted (2)(b) that read: "(b) Upon reaching retirement age, a member becomes eligible to receive a retirement allowance under the provisions of 19-3-901 or 19-3-902"; in (3), in first sentence, substituted "membership service" for "creditable service", after "terminates" substituted "service" for "covered employment", after "contributions" substituted "in the pension trust fund" for "on deposit", after "is" inserted "an inactive nonvested member and is", and after "benefits" substituted "from the retirement system" for "other than" and in last sentence, before "a refund", inserted "An inactive nonvested member is eligible only for"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-402. Federally subsidized employees eligible. A person whose compensation is paid either fully or in part from federal funds but who is not subject to the federal retirement system is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds.

History: En. 68-2510 by Sec. 58, Ch. 323, L. 1973; amd. Sec. 1, Ch. 445, L. 1977; R.C.M. 1947, 68-2510; amd. Sec. 1, Ch. 458, L. 1983.

19-3-403. Exclusions from membership. The following persons may not become members of the retirement system:

(1) inmates of state institutions;

(2) persons in state institutions principally for the purpose of training, but who receive compensation;

(3) independent contractors, unless there is a written contract that specifies the creation of an employer-employee relationship for purposes of retirement coverage under the retirement system;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any

state government, or political subdivision of the state and who are receiving credit in the other system for service. It is the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, solely for the purposes of making regular contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(6) full-time students employed at and attending the same public elementary school, high school, vocational-technical center, or community college or any unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the board in writing after becoming a member and become eligible to receive credited service for the excluded service under the provisions of 19-3-505.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(1) thru (8)(a), (9) thru (12); amd. Sec. 1, Ch. 149, L. 1979; amd. Sec. 1, Ch. 60, L. 1981; amd. Sec. 1, Ch. 142, L. 1981; amd. Sec. 1, Ch. 147, L. 1983; amd. Sec. 1, Ch. 303, L. 1985; amd. Sec. 1, Ch. 275, L. 1991; amd. Sec. 51, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 deleted former (1) that read: "(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded"; in (1), after "institutions", deleted "who are allowed compensation for such service as they are able to perform"; at end of (3) substituted "the retirement system" for "The Public Employees' Retirement System Act"; deleted former (5) through (7) that read: "(5) employees serving in employment which does not exceed the equivalent of 120 working days in any fiscal year who have not filed with the board a written request to become members. A member so excluded from membership by this subsection may later become a member by otherwise becoming an employee or by written request after the initial date of exclusion. If he affirmatively exercises the option and pays the employee contribution plus interest, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded plus accrued interest on all employer contributions from the date the contributions would have been made to the date of payment.

(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member by meeting the requirements prescribed in 19-3-505 and 19-3-506;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members"; in (4), in third sentence, substituted "regular contributions" for "normal contributions"; at end of (4)(a), after "retirement system", deleted "and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for purposes of computing the employer or employee contributions to the retirement system"; in (4)(b) substituted "subsection (4)" for "subsection (8)" and after "employee" deleted "as defined in this chapter"; in (5), after "court commissioners", inserted "elected officials"; deleted (10) through (12) that read: "(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth- and seventh-class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed for 6 months or less by the legislature or the legislative council to perform work related to the legislative session who do not file with the board an election in writing to become members"; near end of (6) substituted "credited service" for "credit"; deleted (14) that read: "(14) the chief administrative officer of any city or county where the chief administrative officer has filed an election in writing with the board to be excluded from membership, this election to be filed no later than July 1, 1979, or 30 days after initial employment by a county or city, whichever is later"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-404. Renumbered 19-3-1211 by Code Commissioner, 1993.

19-3-405. Renumbered 19-3-318 by Code Commissioner, 1993.

19-3-406. Renumbered 19-2-601. Sec. 238, Ch. 265, L. 1993.

19-3-407 through 19-3-410 reserved.

19-3-411. Eligible employees. Subject to 19-3-402, 19-3-403, and 19-3-412, eligible employees under the system who are not covered by a separate retirement system under this title include the following:

(1) any employee of the state of Montana, its university system or any of the colleges, schools, components, or units of the university system; and

(2) any employee of a contracting employer eligible to participate under the contract between the board and the contracting employer under 19-3-201.

History: En. Sec. 48, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-3-412. Optional membership. The following employees in covered employment may become members of the retirement system at their option at any time during their employment in a covered position by filing a membership card with the board:

(1) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(2) part-time employees serving in employment that does not exceed the equivalent of 120 working days in any fiscal year;

(3) employees directly appointed by the governor;

(4) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(5) the chief administrative officer of any city or county;

(6) employees of county hospitals or rest homes in the sixth- and seventh-class counties.

History: En. Sec. 50, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 5

Service Credit

19-3-501. Absence not included in service. Except as otherwise provided in this part, time during which a member is absent from service may not be included in the calculation of service credit.

History: En. 68-1604 by Sec. 8, Ch. 323, L. 1973; amd. Sec. 2, Ch. 99, L. 1977; R.C.M. 1947, 68-1604; amd. Sec. 55, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section regarding absence from service for former section that read: "Except as provided in 19-3-502, 19-3-503, and 19-3-504, time during which a member is absent from compensated employment with an employer may not be allowed in computing service." Amendment effective July 1, 1993.

19-3-502. Renumbered 19-2-705. Sec. 238, Ch. 265, L. 1993.

19-3-503. Election to qualify military service. (1) (a) A member with 10 years or more of service credits may, at any time prior to retirement, make a written election with the board to purchase service credits for all or any portion of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-705.

(b) To qualify this service, the member shall contribute to the pension trust fund the amount determined by the board to be due based on the member's compensation and regular contribution rate as of the member's 11th year and as many succeeding years as are required to qualify this service, with regular interest from the date the member becomes eligible for this benefit to the date the member contributes. The member may not purchase more of this service credit than the member has service credits in excess of 10 years.

(2) If a member has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit, the member may not qualify the member's military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States, including the

first special service force or the American merchant marine in oceangoing service during the armed conflict, December 7, 1941, to August 15, 1945, is not more than 25% of the total sum of all years of military service including reserve and active duty time.

History: En. 68-1605.1 by Sec. 10, Ch. 323, L. 1973; amd. Sec. 2, Ch. 128, L. 1975; R.C.M. 1947, 68-1605.1; amd. Sec. 5, Ch. 609, L. 1989; amd. Sec. 56, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1)(a), near beginning, substituted "service credits" for "state service qualified under this chapter", before "all or any portion" substituted "purchase service credits for" for "qualify", after "August 15, 1945" deleted "for the purpose of calculating retirement benefits", and near end, before "credit", inserted "service"; in (1)(b), in first sentence, substituted "pension trust fund" for "retirement fund", substituted "regular contribution rate" for "normal contribution rate", and before "interest" inserted "regular" and in second sentence substituted "purchase" for "qualify", after "service" inserted "credit", and substituted "service credits" for "state service"; in (2), before "service retirement benefit", substituted "military" for "normal"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service by reason of injury or illness determined within 1 year after the end of the absence as arising out of and in the course of the member's employment is considered membership service. However, the member may not earn service credits for this period unless the member complies with subsections (2) through (4), in which case the absence is considered as time spent in service for both service credits and membership credits.

(2) (a) Any member absent because of an employment-related injury that entitles the member to workers' compensation payments may contribute to the retirement system, upon the member's return to service, an amount equal to the contributions that would have been made by the member to the system on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to covered service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute an amount equal to what its employer contributions would have been had the member not been absent from service. In addition, the employer may contribute an amount equal to the interest accruing on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make a contribution shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

(4) Payment of the employee's contributions that are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service.

(5) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602.

History: En. 68-1606 by Sec. 11, Ch. 323, L. 1973; amd. Sec. 1, Ch. 300, L. 1977; R.C.M. 1947, 68-1606; amd. Sec. 1, Ch. 311, L. 1983; amd. Sec. 1, Ch. 103, L. 1987; amd. Sec. 57, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in first sentence, substituted "employment is considered membership service" for "employment shall be considered as spent in service" and at end, after "service", deleted "for the purpose of qualification for service retirement benefits under Title 19, chapter 3, part 9, or survivorship allowances under Title 19, chapter 3, part 12, but not for the calculation of such benefits" and at beginning of second sentence inserted "However, the member may not earn service credits for this period" and at end substituted "service credits and membership credits" for "the calculation and qualification of benefits"; in (2)(a), before "interest", inserted "regular" and substituted "covered service" for "covered employment"; in (2)(b) inserted third sentence regarding employer contribution for all employees; in (3) substituted "covered service" for "covered employment"; at end of (4) substituted "covered service" for "covered employment"; in (5), after "member", deleted "so absent", after "contribute" inserted "for an absence", and before "contributions" deleted "normal"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-505. Qualification of previous employment with employer. (1) Subject to the provisions of this section, any person who has employment with an employer that is not service may convert all or a portion of the employment to membership service by filing written notice with the board.

(2) (a) The person shall pay to the retirement system the sum of the amount that the person and the person's employer would have contributed during the period of service converted if the employer had been an employer covered by the retirement system and the regular interest that would have accumulated on the amount to the time of payment. However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(b).

(b) The employer shall establish a policy as to the payment of retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board shall determine the eligibility of all service credit requests.

(4) Payment may be made in one sum at the time of filing notice or by making additional contributions on an installment basis before retirement. Failure to make regular monthly payments in any month in which the member receives normal compensation forfeits the person's right to make any further installment payments, unless permission is granted by the board.

History: En. 68-1607 by Sec. 12, Ch. 323, L. 1973; amd. Sec. 2, Ch. 190, L. 1974; amd. Sec. 3, Ch. 128, L. 1975; amd. Sec. 1, Ch. 89, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1607; amd. Sec. 2, Ch. 103, L. 1987; amd. Sec. 58, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in two places, substituted "employment" for "service" and before "service" deleted "creditable"; in (2)(a), near middle of first sentence after "employer", inserted "covered by the retirement system", in first and second sentences, before "interest", inserted "regular", and at end of second sentence, after "interest", inserted reference to subsection (2)(b); in (2)(b), near beginning before "retroactive", inserted "payment of"; at end of (3), after "requests", deleted "as prescribed in 19-3-304"; in (4), in first sentence, inserted reference to additional contributions and after "basis" substituted "before retirement" for "before termination of covered employment"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-506. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-1608 by Sec. 13, Ch. 323, L. 1973; amd. Sec. 4, Ch. 128, L. 1975; amd. Sec. 2, Ch. 89, L. 1977; amd. Sec. 4, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1608.

19-3-507. Repealed. Sec. 4, Ch. 290, L. 1983.

History: En. 68-2511 by Sec. 59, Ch. 323, L. 1973; amd. Sec. 13, Ch. 99, L. 1977; R.C.M. 1947, 68-2511.

19-3-508. Renumbered 19-2-703. Sec. 238, Ch. 265, L. 1993.

19-3-509. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify as service in this retirement system all or any portion of the member's service credit in the highway patrol officers', sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system for which the member has received a refund of membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the public employees' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the public employees' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. The board may grant service credit upon contribution by the employee of the actuarial cost of granting this service in the public employees' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19.

History: En. Sec. 1, Ch. 145, L. 1981; amd. Sec. 3, Ch. 290, L. 1983: amd. Sec. 1, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 59, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1)(a), in first sentence after "qualify", inserted "as service in this retirement system" and substituted "service credit" for "creditable service" and in second sentence substituted "pension trust fund" for "retirement fund" and after "based on" deleted "his compensation earned as a member of the former system and the normal contribution rate according to"; in (1)(b), near beginning, substituted "division" for "administrator" and near middle, after "normal", inserted "cost"; in (2)(a), at end of second sentence before "public employer", inserted "former" and in third sentence, after "credit", deleted "subject to the provisions of 19-3-304(2)" and after "based on the" deleted "employee's compensation earned during this period of service and the normal contribution rate according to the"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-510. Employment in United States government. (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may qualify the federal employment as service in the retirement system under subsection (2), provided that:

(a) the member has accrued 5 years or more of membership service in the retirement system; and

(b) the member returns to full-time service with the former state or local government employer for at least 1 year after completing employment in the United States government.

(2) A member of the retirement system who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) qualify the period of federal employment under this section within 2 years after return to service under the retirement system.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the retirement system and may be included in the determination of final average salary, provided that the final average salary cannot exceed 100% of the member's highest annual compensation earned as a state or local government employee.

History: En. Sec. 1, Ch. 261, L. 1981; amd. Sec. 60, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in four places, before "retirement system", deleted "public employees'"; in (1) substituted "federal employment as service" for "federal service as creditable service"; in (1)(a), before "service", inserted "membership"; in (1)(b) substituted "full-time service" for "full-time employment", before "state" substituted "former" for "prior", and after "completing" substituted "employment" for "service"; in (2)(a) substituted "pension trust fund" for "account"; in (2)(b) substituted "the period of federal employment under this section" for "this service under 19-3-505" and at end substituted "service under the retirement system" for "active status as a state or local government employee"; in (3) substituted first "final average salary" for "final compensation as defined in 19-3-104" and substituted second "final average salary" for "final compensation"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-511. Transfer of service credits from teachers' retirement system. (1) A member may at any time before retirement make a written election with the board to qualify in the public employees' retirement system all of the member's service in the teachers' retirement system. The amount that must be paid to the retirement system to qualify this service under this section is the sum of subsections (2) and (3).

(2) The teachers' retirement system shall transfer to the public employees' retirement system an amount equal to 72% of the amount determined in accordance with subsection (3).

(3) The employee shall pay an amount equal to the employee's accumulated contributions at the time the employee terminated active membership with the teachers' retirement system, as defined in 19-20-302, plus accrued

interest from the date of termination until payment is received by the public employees' retirement system, based on the interest tables in use by the teachers' retirement system.

(4) The amount of service credit granted in subsection (1) must be on a month-by-month basis. Military service credit transferred from the teachers' retirement system must be included in the 5-year maximum military service credit provided for in 19-3-503.

(5) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit qualified under this section and the amount paid to the retirement system under subsections (2) and (3).

(6) If a member who has service credit in the teachers' retirement system dies before the member qualifies this service in the public employees' retirement system and if the service credits from both systems, when combined, entitle the member's designated beneficiary to a survivorship benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system the contributions necessary to qualify this service in the public employees' retirement system as provided in subsections (2) and (3).

History: En. Sec. 1, Ch. 290, L. 1983; amd. Sec. 1, Ch. 690, L. 1989; amd. Sec. 1, Ch. 64, L. 1991; amd. Sec. 61, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), near end of first sentence before "service", deleted "creditable"; in (3), after "membership", inserted "with the teachers' retirement system" and near end, before "retirement system", inserted "public employees'"; in (4), (5), and (6) substituted "service credit" for "creditable service"; in (6), in three places, substituted "survivorship benefit" for "death benefit" and in first sentence, before "beneficiary", inserted "designated"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-512. Qualification of service from other public retirement systems. (1) A member with 5 or more years of membership service in the public employees' retirement system may qualify:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not qualify more than 5 years of service under this section. To qualify this service, a member shall:

(a) at any time before retirement make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board, based on:

(i) the member's compensation in the sixth year of service covered under the public employees' retirement system; and

(ii) the most recent actuarial valuation.

(3) Contributions to qualify service under this section may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

(4) Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-3-503.

(5) Service qualified under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the accumulated contributions made to qualify the service.

History: En. Sec. 1, Ch. 11, L. 1987; amd. Sec. 1, Ch. 196, L. 1989; amd. Sec. 62, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) substituted "membership service" for "creditable service"; in (2)(b) substituted "pension trust fund" for "retirement fund"; in (2)(b)(ii), at beginning, deleted "the normal contribution rate according to"; in (3) inserted reference to making additional contributions; in (5), in two places, substituted "retirement benefit" for "retirement allowance", in first sentence substituted "service credit" for "creditable service", and in second sentence, before "contributions", inserted "accumulated"; deleted (5)(b) that read: "(b) apply the contributions made to qualify the service under the provisions of 19-3-702"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-513. Election to purchase additional service. (1) At any time before retirement, a person who became a member of the retirement system before July 1, 1989, and who has 5 years or more of membership service may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for each 5 years of membership service that the member has qualified under the retirement system, up to a maximum of 5 years of additional service.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the member's compensation for the 12-month period immediately preceding the date the member elects to purchase the service multiplied by the combined employee and employer contribution rates contained in 19-3-315 and 19-3-316. Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

(3) (a) Except as provided in subsection (3)(b), after January 1, 1990, a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for service retirement.

History: En. Sec. 1, Ch. 73, L. 1989; amd. Sec. 17, Ch. 16, L. 1991; amd. Sec. 63, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in three places, after "service", inserted "credit"; in (1), at end of first sentence, substituted "retirement benefit" for "retirement allowance"; in (2), in first sentence, substituted "pension trust fund" for "retirement fund", before "compensation" deleted "normal", and at end deleted "in effect on and after July 1, 1993" and in second sentence inserted reference to making additional contributions; in (4), after "section", inserted "is not membership service and"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-514 through 19-3-519 reserved.

19-3-520. Participation by public administrators. (1) A public administrator appointed or elected under 7-3-441 or 7-4-2203 who is paid on a fee basis and who elects membership in the retirement system must be granted service credit on an annual basis. The member shall receive 1 full year of service credit for each full year in which the member serves in office.

(2) "Final average salary" means the member's highest average annual compensation during any 3 calendar years in office for which service credit has been granted.

History: En. Sec. 1, Ch. 71, L. 1989; amd. Sec. 64, Ch. 265, L. 1993; Sec. 19-3-907, MCA 1991; redes. 19-3-520 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in three places substituted "service credit" for "creditable service"; at beginning of (2) substituted ""Final average salary"" for "For the purpose of calculating a retirement benefit under 19-3-904 or 19-3-1008 for a person who elects membership under subsection (1), "final compensation""; and made minor changes in style. Amendment effective July 1, 1993.

19-3-521. Service credit for legislative members. A member of the legislature of Montana must be credited with membership service for that portion of each year for which the member pays normal contributions.

History: En. Sec. 65, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 6

Financial Management (Renumbered. Sec. 238, Ch. 265, L. 1993)

Part Compiler's Comments

Sections Renumbered:

19-3-601. Renumbered 19-2-503.
19-3-602. Renumbered 19-2-504.
19-3-603. Renumbered 19-2-505.
19-3-604. Renumbered 19-2-1003.
19-3-605. Renumbered 19-2-507.
19-3-606. Renumbered 19-2-1002.

Part 7

Employee Contributions (Renumbered)

Part Compiler's Comments

Sections Renumbered:

19-3-701. Renumbered 19-3-315 by Code Commissioner, 1993.

19-3-702. Renumbered 19-2-704. Sec. 238, Ch. 265, L. 1993.

19-3-703. Renumbered 19-2-602. Sec. 238, Ch. 265, L. 1993.

19-3-704. Renumbered 19-2-603. Sec. 238, Ch. 265, L. 1993.

Part 8

Employer Contributions (Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

19-3-801. Renumbered 19-3-316 by Code Commissioner, 1993.

19-3-802. Renumbered 19-2-506. Sec. 238, Ch. 265, L. 1993.

19-3-803. Renumbered 19-3-317 by Code Commissioner, 1993.

19-3-804. Repealed. Sec. 236, Ch. 265, L. 1993.

19-3-805. Renumbered 19-2-408. Sec. 238, Ch. 265, L. 1993.

Histories of Repealed Sections:

19-3-804. En. 68-2507 by Sec. 55, Ch. 323, L. 1973; R.C.M. 1947, 68-2507; amd. Sec. 2, Ch. 348, L. 1979; amd. Sec. 2, Ch. 138, L. 1991.

Part 9

Service Retirement Benefits

19-3-901. Eligibility for service retirement. A member who has attained the age of 60 and has 5 years of membership service is eligible for service retirement. A member who has attained age 65 while employed in a position covered by a public employees' retirement system is eligible for service retirement regardless of the member's years of membership service. A member who has 30 years or more of membership service is eligible for service retirement regardless of the member's age.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(1); amd. Sec. 2, Ch. 162, L. 1991; amd. Sec. 66, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence substituted "has 5 years of membership service" for "completed 5 years of qualified service"; in two places substituted "membership service" for "creditable service"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-902. Eligibility for early retirement. A member who is not eligible for service retirement but has attained age 50 and has 5 years of membership service is eligible for early retirement. A member who has completed 25 years or more of membership service is eligible for early retirement.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(2); amd. Sec. 6, Ch. 496, L. 1981; amd. Sec. 67, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence substituted "has 5 years of membership service" for "completed 5 years of qualified service" and in second sentence substituted "membership service" for "state service". Amendment effective July 1, 1993.

19-3-903. Time of commencement of benefit. (1) The board shall grant a retirement benefit to any member who has fulfilled the eligibility requirements of 19-3-901 or 19-3-902, terminated covered service, and filed the appropriate written application.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), the retirement benefit may commence on the first day of the month following the member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following receipt of the written application.

(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 60th birthday.

(c) If an elected official's term of office expires before the 15th day of the month, the official may elect to retire on the first day of the last month of the official's term of office. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating final average salary under the retirement system in that month, and compensation earned in that month is not subject to employer or employee contributions.

History: En. 68-2002 by Sec. 30, Ch. 323, L. 1973; amd. Sec. 11, Ch. 332, L. 1977; R.C.M. 1947, 68-2002; amd. Sec. 1, Ch. 53, L. 1983; amd. Sec. 2, Ch. 196, L. 1989; amd. Sec. 68, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in three places substituted "retirement benefit" for "retirement allowance"; in two places substituted "inactive member" for "terminated member"; in (1), near end, substituted "covered service" for "covered employment"; in (2)(a), near end, substituted "a later month" for "the month"; in (2)(c), in second sentence after "may not earn", substituted "membership service, service credit, or compensation for purposes of calculating final average salary under the retirement system" for "service or salary credits"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-904. Amount of service retirement benefit. (1) The monthly amount of retirement benefit payable to a member following service retirement is the greater of subsection (1)(a) or (1)(b) as follows:

(a) one fifty-sixth of the member's final average salary multiplied by the number of years of the member's total service credit; or

(b) a monthly annuity that is the actuarial equivalent of double the member's accumulated regular contributions.

(2) If a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1501, the member's beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day the member's retirement allowance commenced over the total of the retirement allowance payments made to the retired member.

History: En. 68-2003 by Sec. 31, Ch. 323, L. 1973; amd. Sec. 9, Ch. 128, L. 1975; amd. Sec. 2, Ch. 241, L. 1977; amd. Sec. 12, Ch. 332, L. 1977; R.C.M. 1947, 68-2003; amd. Sec. 2, Ch. 73, L. 1989; amd. Sec. 3, Ch. 558, L. 1989; amd. Sec. 69, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) substituted "monthly amount of retirement benefit" for "annual amount of retirement allowance" and at end substituted "greater of subsection (1)(a) or (1)(b)" for "sum of (a), (b), and (c)"; deleted former (1)(a) that read: "(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences"; in (1)(a) substituted "final average salary" for "final compensation" and substituted "total service credit" for "creditable service and additional service purchased under 19-3-513"; substituted (1)(b) regarding monthly annuity for "any retirement allowance payable under 19-3-905"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-905. Adjustment of benefit for certain members. The minimum retirement benefit payable to a vested member who has attained age 70 in service is an annuity of $40 per month.

History: En. 68-2004 by Sec. 32, Ch. 323, L. 1973; amd. Sec. 10, Ch. 128, L. 1975; amd. Sec. 13, Ch. 332, L. 1977; R.C.M. 1947, 68-2004; amd. Sec. 3, Ch. 196, L. 1989; amd. Sec. 70, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present text regarding adjustment of benefit for certain members for former section that read: "The annual amount of retirement allowance payable to a member following his service retirement must be increased by the excess, if any, of the greater of (1) or (2), as follows, over 19-3-904(1)(b):

(1) the sum of a pension for prior service equal to one-sixtieth of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;

(2) if the member attained age 70 in service, the lesser of $480 or one-half of his final compensation." Amendment effective July 1, 1993.

19-3-906. Early retirement benefit. (1) The amount of retirement benefit payable to a member following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of service credit pursuant to 19-3-904.

(2) The early retirement benefit must be determined as prescribed in 19-3-904, with the exception that the benefit must be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service.

(3) The actuarial reduction provided for in this section must be adjusted for any additional service purchased under 19-3-513.

History: En. 68-2005 by Sec. 33, Ch. 323, L. 1973; R.C.M. 1947, 68-2005; amd. Sec. 7, Ch. 496, L. 1981; amd. Sec. 60, Ch. 370, L. 1987; amd. Sec. 3, Ch. 73, L. 1989; amd. Sec. 71, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in four places substituted references to retirement benefit for references to retirement allowance; in (1), near beginning before "amount", deleted "annual" and near end substituted "service credit" for "creditable service"; in (2)(a) and (2)(b) substituted "membership service" for "creditable service"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-907. Renumbered 19-3-520 by Code Commissioner, 1993.

19-3-908. Retirement incentive program — window of eligibility. (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or whose service is involuntarily terminated because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service that the member is qualified to purchase under 19-3-513. A member is entitled to a refund for that portion of previously purchased additional service that would otherwise

cause the member to be unqualified to receive all or part of the additional service provided in this section.

(3) An active member who is involuntarily terminated because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination, eligible for normal service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) A contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (5).

(5) The board may allow an employer to pay the contributions required under subsection (2) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(6) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 600 or more hours in a calendar year shall forfeit the additional service. The employer's contributions to purchase that member's additional service, minus any retirement benefits already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions.

History: En. Sec. 1, Ch. 567, L. 1993.

Compiler's Comments

Temporary — Montana University System Voluntary Termination for Teachers' Retirement System Members: Section 2, Ch. 567, L. 1993, provided: "(1) The board of regents shall establish a voluntary termination incentive during the 1994-95 biennium for all members of the teachers' retirement system employed on a full-time basis on or before February 1, 1993, who are eligible for normal service retirement under 19-4-801 [19-20-801] and 19-4-802 [19-20-802]. The termination incentive, combined with employer contributions due the teachers' retirement system under 19-4-101(5)(d) [19-20-101(5)(d)], must be an amount equal to 1 year of the combined member and employer contributions established in 19-4-602 [19-20-602] and 19-4-605 [19-20-605] for each 5 years of creditable service within the teachers' retirement system, not to exceed the amount of combined contributions for 3 years.

(2) A member who terminates employment under the provisions of subsection (1) and who returns to employment in a unit of the Montana university system, except as provided in 19-4-804 [19-20-804], shall refund the voluntary termination incentive to the university system.

(3) To qualify for the termination incentive authorized in this section, the participant shall announce an intent to terminate employment no later than the end of the 1993-94 academic contract year or the end of the 1994 summer session on or before December 1, 1993.

(4) The board of regents shall define the terms of the voluntary termination incentive by July 1, 1993." Effective April 28, 1993, terminates June 30, 1995, and applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

Temporary — Montana University System Voluntary Termination for Optional Teachers' Retirement System Participants: Section 3, Ch. 567, L. 1993, provided: "(1) The board of regents shall establish a voluntary termination incentive during the 1994-95 biennium for all optional retirement participants who are employed on a full-time basis on or before February 1, 1993, and who are at least 50 years of age on or before the date of termination. The incentive must be an amount equal to 1 year of the combined member and board of regents contributions established in 19-21-203 for each 5 years of service with the Montana university system, not to exceed the amount of combined contributions for 3 years.

(2) A participant who terminates employment under the provisions of subsection (1) and who returns to employment in a unit of the Montana university system, except as provided in 19-4-804 [19-20-804], shall refund the voluntary termination incentive to the university system.

(3) To qualify for the termination incentive authorized in this section, the participant shall announce an intent to terminate employment no later than the end of the 1993-94 academic contract year or the end of the 1994 summer session on or before December 1, 1993.

(4) The board of regents shall define the terms of the voluntary termination incentive by July 1, 1993." Effective April 28, 1993, terminates June 30, 1995, and applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

Reports on Effect of Incentives: Section 4, Ch. 567, L. 1993, provided: "The department of administration, in cooperation with the university system and the public employees' retirement board, shall report to the 54th legislature on the effect of the retirement incentive offered to members of the public employees' retirement system employed by the state, including the university system. The board of regents, in cooperation with the teachers' retirement board, shall report to the 54th legislature on the effect of the voluntary termination incentives offered to members of the teachers' retirement system employed by the Montana university system. These reports must include, but are not limited to:

(1) a summary of the positions from which employees terminated employment under the provisions of [section 1] [19-3-908];

(2) whether positions vacated under [section 1] [19-3-908] were refilled and when; and

(3) the cost or savings resulting from the implementation of [section 1] [19-3-908]." Effective April 28, 1993, and applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

Retroactive Applicability: Section 5, Ch. 567, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993."

Effective Date: Section 7, Ch. 567, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 28, 1993.

Part 10

Disability Retirement Benefits

19-3-1001. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(2).

19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service or early retirement but has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in 19-3-1008(1).

(2) An active member age 60 or older who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed election form is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual becoming a member after February 24, 1991, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2).

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(1); amd. Sec. 2, Ch. 311, L. 1983; amd. Sec. 56, Ch. 613, L. 1989; amd. Sec. 1, Ch. 49, L. 1991; amd. Sec. 72, Ch. 265, L. 1993; amd. Sec. 14, Ch. 630, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), at end of exception clause, deleted "and 19-3-1004", after "member" inserted reference to February 24, 1991, near middle substituted "has at least 5 years of membership service" for "has completed 5 years of creditable service", and after "while" substituted "an active member" for "in active service, as defined in 19-3-1001"; in (2), in first sentence before "member", inserted "active", substituted "membership service" for "creditable service", and near end, after "service retirement", inserted "in order" and in third sentence, after "disabled", deleted "under the provisions of 19-3-1003"; in (3)(a), near beginning of first sentence after "member", substituted "in service" for "employed" and in fourth sentence substituted "membership service" for "creditable service" and at end, after "while", substituted "an active member" for "in active service, as defined in 19-3-1001"; in (3)(b) substituted "membership service" for "creditable service" and after "while" substituted "an active member" for "in active service, as defined in 19-3-1001"; and made minor changes in style. Amendment effective July 1, 1993.

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

19-3-1003. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(3).

19-3-1004. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(4).

19-3-1005. Application for disability retirement benefit. The board shall grant a disability retirement benefit to any member who has fulfilled the eligibility requirements of 19-3-1002 and filed the appropriate written application. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed or by any other person on behalf of the member, or the board upon its own motion may make the application. Application must be made within 4 months after the member's discontinuance of service unless the member is disabled continuously from the date of discontinuance of service to the date of the application.

History: En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part); amd. Sec. 73, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 near beginning substituted "disability retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1006. Time of commencement of benefit. The retirement benefit payable to a member who has become disabled commences on the day following the member's last day of service.

History: En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part); amd. Sec. 74, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted "retirement benefit" for "retirement allowance" and at end, before "service", deleted "membership"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1007. Benefit for duty-related disability. (1) The retirement benefit payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of the member's final average salary.

(2) Any retired member receiving a disability retirement benefit on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, is subject to the provisions of this section after July 1, 1977.

History: En. 68-2103 by Sec. 36, Ch. 323, L. 1973; amd. Sec. 7, Ch. 99, L. 1977; amd. Sec. 4, Ch. 241, L. 1977; R.C.M. 1947, 68-2103; amd. Sec. 55, Ch. 613, L. 1989; amd. Sec. 75, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), at beginning of first sentence, substituted "retirement benefit" for "annual amount of retirement allowance" and near end substituted "final average salary" for "final compensation" and deleted last two sentences that read: "However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded workers' compensation, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period"; in (2) substituted "disability retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1008. Benefit for disability. (1) The monthly amount of the retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(1) is the greater of subsection (1)(a) or (1)(b) as follows:

(a) 90% of one fifty-sixth of the member's final average salary multiplied by the member's years of service credit, including any additional service purchased under 19-3-513; or

(b) a retirement benefit equal to 25% of the member's final average salary.

(2) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement benefit equal to one fifty-sixth of the member's final average salary multiplied by the member's years of service credit, including any additional service purchased under 19-3-513.

(3) Subject to the provisions of part 11 of this chapter, a retired member receiving a disability retirement benefit on February 24, 1991, who has previously been granted a disability retirement benefit under the provisions of this section will continue to receive the monthly disability retirement

benefit as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature.

History: En. 68-2104 by Sec. 37, Ch. 323, L. 1973; amd. Sec. 5, Ch. 241, L. 1977; amd. Sec. 14, Ch. 332, L. 1977; R.C.M. 1947, 68-2104; amd. Sec. 4, Ch. 73, L. 1989; amd. Sec. 4, Ch. 558, L. 1989; amd. Sec. 2, Ch. 49, L. 1991; amd. Sec. 76, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted "final average salary" for "final compensation"; in two places substituted "service credit" for "creditable service"; in four places substituted "retirement benefit" for "retirement allowance"; in (1) substituted present text regarding monthly retirement benefit for former text that read: "(1) The annual amount of retirement allowance payable to a member eligible for disability retirement under the provisions of 19-3-1002(1) is the sum of (1)(a), (1)(b), and (1)(c) of this section as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(c) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct, or violation of law on the part of the member, a pension which is the greater of (1)(c)(i) or (1)(c)(ii) as follows:

(i) a pension which, together with the annuity provided under subsection (1)(b), shall make the retirement allowance equal to"; in (1)(a), before "additional service", substituted "including any" for "and"; in (2), near beginning before "amount", substituted "monthly" for "annual" and near end, before "additional service", substituted "including any" for "and"; deleted former (3) that read: "(3) Except as provided in 19-3-1201, if a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member"; in (3), in three places, substituted references to disability retirement benefit for references to disability retirement allowance; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1009 through 19-3-1014 reserved.

19-3-1015. Medical examination of disability retiree — cancellation and reinstatement. (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the retired member and the board. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform either the duties of the position held by the member when the member retired or the duties proposed to be assigned to the member. If the board determines the member is not incapacitated or if the member refuses to submit to a medical examination, the member's retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) A member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in the same classification with duties

within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to have been discontinued coincident with the commencement of the member's retirement benefit.

History: En. 68-2201 by Sec. 38, Ch. 323, L. 1973; amd. Sec. 8, Ch. 99, L. 1977; R.C.M. 1947, 68-2201; amd. Sec. 1, Ch. 138, L. 1989; amd. Sec. 77, Ch. 265, L. 1993; Sec. 19-3-1102, MCA 1991; redes. 19-3-1015 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to disabled member or member for references to recipient of a disability retirement allowance or recipient and substituted references to retirement benefit, disability retirement benefit, or benefit for references to retirement allowance, disability retirement allowance, or allowance; in (1), in second sentence, substituted "at a place mutually agreed upon by the retired member and the board" for "at the place of residence of the recipient or another place mutually agreed upon"; and made minor changes in style. Amendment effective July 1, 1993.

Part 11

Reemployment of Retired Members

19-3-1101. Renumbered 19-3-1501 by Code Commissioner, 1993.

19-3-1102. Renumbered 19-3-1015 by Code Commissioner, 1993.

19-3-1103. Disability benefit reduced by earnings — change in retirement status. (1) (a) If the recipient of a disability retirement benefit engages in a gainful occupation during any month other than in a position covered by the retirement system, the amount of the recipient's retirement benefit for that month must be reduced to an amount that, when added to the compensation earned by the recipient in that occupation, does not exceed the amount of the recipient's monthly compensation at the time of the recipient's retirement.

(b) For the purpose of calculating a reduction under subsection (1)(a), the board, at the request of a recipient of a disability retirement benefit, may adjust the recipient's monthly compensation as it was at the time of retirement by an inflationary factor if the recipient has been receiving a disability retirement benefit for more than 36 consecutive months.

(2) At the request of a recipient of a disability retirement benefit who is age 60 or older, the board may grant service retirement status to the recipient without recalculating the recipient's monthly benefit.

(3) Benefit adjustments granted by the legislature may not be included in calculations required under this section.

History: En. 68-2202 by Sec. 39, Ch. 323, L. 1973; amd. Sec. 4, Ch. 190, L. 1974; R.C.M. 1947, 68-2202; amd. Sec. 8, Ch. 496, L. 1981; amd. Sec. 1, Ch. 23, L. 1987; amd. Sec. 89, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to retirement benefit, disability retirement benefit, or monthly benefit for references to retirement allowance, disability retirement allowance, or monthly allowance; in (1)(a), at beginning, substituted "If the recipient of a disability retirement benefit engages" for "Should the recipient of a retirement allowance because of disability engage" and after "other than" substituted "in a position covered by the retirement system" for "as an employee as defined in 19-3-104"; in (1)(b), after "compensation", inserted "as it was"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1104. Cancellation of disability retirement benefit upon reemployment. Any person receiving a retirement benefit who becomes an employee is considered reinstated to service from retirement, and the person's retirement benefit is canceled.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part); amd. Sec. 86, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in two places substituted "retirement benefit" for "retirement allowance" and after "reinstated" inserted "to service"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1105. Benefit upon second retirement. (1) Upon retirement subsequent to a cancellation under 19-3-1104, a member shall receive a recalculated benefit as provided in 19-3-904. The recalculated benefit is based on service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

(2) Except as otherwise expressly provided by law, the member must receive the benefit of provisions enacted subsequent to initial retirement only if the member accrues at least 2 years of service credit subsequent to reinstatement and then only with respect to the service credit.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part); amd. Sec. 87, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in four places substituted references to service credit for references to creditable service; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits. (1) A retired member under 65 years of age receiving a service retirement benefit may return to employment covered by the retirement system for a period not to exceed 600 hours in any calendar year without returning to service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 600-hour limitation in any calendar year after retirement must be reduced $1 for each $1 earned after working 600 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 600-hour limitation of subsection (1) or may earn an amount equal to 50% of the retiree's current annual retirement benefits, whichever limitation provides the greater compensation to the retiree, in any calendar year. Upon reaching the applicable limitation, the retiree's benefits must be reduced $1 for each $1 in other income earned in covered service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system shall report to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(2); amd. Sec. 9, Ch. 496, L. 1981; amd. Sec. 2, Ch. 303, L. 1985; amd. Sec. 2, Ch. 275, L. 1991; amd. Sec. 88, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), at beginning of first sentence, substituted "A retired member under 65 years of age receiving a service retirement benefit" for "A person under 65 years of age receiving a service retirement allowance, not as a beneficiary" and at end, after "calendar year", inserted "without returning to service and without any effect to the retiree's retirement benefit" and at beginning of second sentence substituted "retirement benefit" for "retirement allowance"; near end of (2), after "earned in", inserted "covered service beyond the applicable limitation during"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1107. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 631, L. 1985.

19-3-1108. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 179, L. 1987.

19-3-1109. Renumbered 19-3-1601 by Code Commissioner, 1993.

19-3-1110. Renumbered 19-3-1602 by Code Commissioner, 1993.

19-3-1111. Renumbered 19-3-1603 by Code Commissioner, 1993.

Part 12

Survivorship Benefits and Death Payments

19-3-1201. Eligibility for death payments. Upon receipt of a written application filed with the board by a designated beneficiary, the board shall grant a death benefit to the designated beneficiary of any member who dies:

(1) while in service;

(2) within 6 months after the discontinuance of service but before retirement;

(3) while a recipient of a disability retirement benefit, if the benefit has been in effect less than 6 months; or

(4) while disabled, if the member has been continuously disabled since discontinuance of the member's service but is not receiving a disability retirement benefit.

History: En. 68-2301 by Sec. 42, Ch. 323, L. 1973; R.C.M. 1947, 68-2301; amd. Sec. 4, Ch. 196, L. 1989; amd. Sec. 78, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in introductory clause, near end before "beneficiary", inserted "designated" and at end substituted "member who dies" for "member or former member who dies in any of the following statuses"; in (3) substituted "disability retirement benefit" for "retirement allowance because of disability" and substituted "the benefit" for "such allowance"; in (4), after first "disabled", deleted "as defined in 19-3-1001" and at end substituted "disability retirement benefit" for "retirement allowance because of the disability"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1202. Amount of lump-sum death payment. The amount of payment to be made to those eligible for death payments is the sum of subsections (1), (2), and (3) as follows:

(1) the member's accumulated contributions;

(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and

(3) the accumulated regular interest on the amounts in subsections (1) and (2) to the first day of the month in which the payment is made.

History: En. 68-2302 by Sec. 43, Ch. 323, L. 1973; R.C.M. 1947, 68-2302; amd. Sec. 1, Ch. 210, L. 1981; amd. Sec. 57, Ch. 613, L. 1989; amd. Sec. 79, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in introduction substituted "amount of payment to be made to those eligible for death payments" for "amount of death benefit"; in (2) substituted "service credit" for "creditable service" and at end, after "credit", deleted "provided, however, that this portion of the death benefit is not payable if the board receives a certification from the state compensation mutual insurance fund that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment"; in (3), before "interest", inserted "regular" and at end substituted "payment is made" for "benefit is paid"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1203. Election of optional death annuity. The designated beneficiary of a member may elect to have the lump-sum death payment paid in an actuarially equivalent form subject to the rules the board may adopt. Election of an optional death annuity must be by written application. The annuity payments are not subject to increases that may be granted to other monthly retirement benefits.

History: En. 68-2303 by Sec. 44, Ch. 323, L. 1973; R.C.M. 1947, 68-2303; amd. Sec. 80, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence, at beginning, substituted "The designated beneficiary of a member" for "A member or his beneficiary after his death" and substituted "lump-sum death payment" for "death benefit", in second sentence, after "death", substituted "annuity" for "benefit", and inserted third sentence regarding exemption from increases; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1204. Survivorship benefit elected by beneficiary. (1) A designated beneficiary eligible to receive a lump-sum death payment may elect, by written application, a survivorship benefit instead, if all of the following conditions are met:

(a) The member on behalf of whom the death benefit is payable had completed 5 years of membership service.

(b) The designated beneficiary is a natural person.

(c) The designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the lump-sum death payment.

(2) (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed.

History: En. 68-2304 by Sec. 45, Ch. 323, L. 1973; amd. Sec. 7, Ch. 190, L. 1974; amd. Sec. 3, Ch. 89, L. 1977; amd. Sec. 10, Ch. 99, L. 1977; amd. Sec. 7, Ch. 241, L. 1977; R.C.M. 1947, 68-2304; amd. Sec. 2, Ch. 153, L. 1985; amd. Sec. 5, Ch. 196, L. 1989; amd. Sec. 81, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section, before "beneficiary", inserted "designated"; in three places substituted "survivorship benefit" for "survivorship allowance"; in (1) substituted "lump-sum death payment" for "death benefit"; in (1)(a) substituted "membership service" for "creditable service"; in (1)(c), at end, substituted "lump-sum death payment" for "death benefit"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1205. Amount of survivorship benefit. The survivorship benefit payable to a member's designated beneficiary is the actuarial equivalent of either:

(1) the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 pursuant to 19-3-904, if the member had not attained age 60 at the time of death; or

(2) if the deceased member had attained age 60 or earned 30 years of service credit at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death.

History: En. 68-2305 by Sec. 46, Ch. 323, L. 1973; amd. Sec. 8, Ch. 190, L. 1974; R.C.M. 1947, 68-2305; amd. Sec. 82, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in two places substituted "service retirement benefit" for "service retirement allowance"; in introduction, at beginning, substituted "survivorship benefit" for "annual amount of survivorship allowance" and before "beneficiary" inserted "designated"; in (2) substituted "earned 30 years of service credit" for "completed 30 years of service"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1206 through 19-3-1209 reserved.

19-3-1210. Death payments to designated beneficiaries of retired members. If a retired member receiving a regular retirement benefit dies without designating a contingent annuitant under 19-3-1501, the member's designated beneficiary must be paid the excess, if any, of the member's accumulated contributions on the day that the member's retirement benefit commenced over the total of the retirement benefit payments made to the retired member.

History: En. Sec. 83, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-3-1211. Refund when former member dies after transferring to another system. The accumulated contributions of a member who dies after becoming a member of any other system described in 19-3-403(4) and before receiving the member's accumulated contributions must be paid to the designated beneficiary.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977;

amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(b); amd. Sec. 84, Ch. 265, L. 1993; Sec. 19-3-404, MCA 1991; redes. 19-3-1211 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted reference to 19-3-403(4) for reference to 19-3-403(8), before "beneficiary" inserted "designated", and after "beneficiary" deleted "nominated by him to receive any death benefit payable under 19-3-1201"; and made minor changes in style. Amendment effective July 1, 1993.

Part 13

Beneficiaries (Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

19-3-1301. Renumbered 19-2-801. Sec. 238, Ch. 265, L. 1993.

19-3-1302. Renumbered 19-2-802. Sec. 238, Ch. 265, L. 1993.

19-3-1303. Repealed. Sec. 12, Ch. 496, L. 1981.

19-3-1304. Renumbered 19-2-803. Sec. 238, Ch. 265, L. 1993.

19-3-1305. Renumbered 19-2-804. Sec. 238, Ch. 265, L. 1993.

Histories of Repealed Sections:

19-3-1303. En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(3).

Part 14

Management of Allowance Payments (Renumbered. Sec. 238, Ch. 265, L. 1993)

Part Compiler's Comments

Sections Renumbered:

19-3-1401. Renumbered 19-2-901.

19-3-1402. Renumbered 19-2-902.

19-3-1403. Renumbered 19-2-903.

19-3-1404. Renumbered 19-2-904.

Part 15

Optional Forms of Benefit Payments

19-3-1501. Optional forms of benefits. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who makes an election must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit to the contingent annuitant whom the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4—upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, then the election is void and the death is considered as that of a member before retirement.

(5) (a) Upon written request to the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

History: En. 68-2203 by Sec. 40, Ch. 323, L. 1973; amd. Sec. 5, Ch. 190, L. 1974; amd. Sec. 9, Ch. 99, L. 1977; amd. Sec. 6, Ch. 241, L. 1977; amd. Sec. 15, Ch. 332, L. 1977; R.C.M. 1947, 68-2203; amd. Sec. 1, Ch. 527, L. 1985; amd. Sec. 85, Ch. 265, L. 1993; Sec. 19-3-1101, MCA 1991; redes. 19-3-1501 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to retirement benefit, optional retirement benefit, regular retirement benefit, or monthly retirement benefit for references to retirement allowance, optional retirement allowance, regular retirement allowance, or monthly retirement allowance; in (1), in first sentence after "member", inserted "or the survivorship benefit of a designated beneficiary" and at end substituted "original benefit" for "regular retirement allowance" and in second sentence, before "payable", substituted "initially" for "a reduced amount", before "lifetime" inserted "or designated beneficiary's", and at end, after "subsequent benefit", inserted remainder of clause concerning payment to contingent annuitant; in (1)(a) and (1)(b) substituted "reduced amount after the death of the initial payee and payable" for "reduced retirement allowance"; in (1)(c) substituted "upon the initial payee's death, other" for "such other" and substituted "equivalent amounts" for "equivalent benefit"; at end of (2) substituted "benefit" for "regular retirement allowance"; in (3), at beginning, substituted "benefit recipient" for "member" and substituted "before the first payment has been made" for "before the member has received the first payment"; and made minor changes in style. Amendment effective July 1, 1993.

Part 16

Minimum Benefits and Benefit Increases

19-3-1601. Eligibility for postretirement adjustment. (1) Except as provided in subsection (2), a benefit recipient is eligible to receive a postretirement adjustment as provided in 19-3-1603 if the person is receiving a:

(a) service retirement benefit and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or

(b) disability or survivorship benefit.

(2) A benefit recipient is ineligible to receive a postretirement adjustment under subsection (1) unless the recipient has been receiving a monthly service, disability, or survivorship benefit for at least 24 consecutive months on or before June 30 in the year the adjustment is made.

History: En. Sec. 1, Ch. 115, L. 1989; amd. Sec. 90, Ch. 265, L. 1993; Sec. 19-3-1109, MCA 1991; redes. 19-3-1601 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in three places substituted "benefit" for "allowance"; near beginning of (1) and (2) substituted "benefit recipient" for "member or beneficiary"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1602. Funding for postretirement adjustment — reserve fund. (1) At the end of each fiscal year, the board shall determine the total investment income earned on the pension trust fund for that fiscal year. From this amount, the board shall subtract the:

(a) actuarial amount required to fund the retirement system for the fiscal year; and

(b) retirement system's administrative and investment expenses for the fiscal year.

(2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of investment income earned on that portion of the pension trust fund balance representing retired members.

(b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

(3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment to eligible benefit recipients under 19-3-1603.

(4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement adjustment of at least $1 under 19-3-1603, an adjustment may not be made in that calendar year.

(5) The amount available for payment of the postretirement adjustment is limited to an amount that would provide a percentage increase in the average service, disability, or survivorship benefit of all eligible benefit recipients, when combined with the postretirement adjustment, that is equal to or less than the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers compiled by the bureau of labor statistics, United States department of labor, or its successor agency.

History: En. Sec. 2, Ch. 115, L. 1989; amd. Sec. 91, Ch. 265, L. 1993; Sec. 19-3-1110, MCA 1991; redes. 19-3-1602 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) and (2) substituted "pension trust fund" for "retirement fund"; near end of (3) substituted "benefit recipients" for "members or beneficiaries"; in (5) substituted "postretirement adjustment" for "postretirement allowance" and substituted "survivorship benefit of all eligible benefit recipients" for "survivorship allowance of all eligible members"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1603. Payment and amount of postretirement adjustment. (1) Effective January 1 of each year that funds are available under 19-3-1602, a benefit recipient eligible under 19-3-1601 must receive a postretirement adjustment in the form of a monthly benefit payable for life.

(2) The board shall calculate the amount of the postretirement adjustment payable to an eligible benefit recipient by:

(a) dividing the amount available under 19-3-1602(3) for payment of the postretirement adjustment by the total accumulated years of service credit for all eligible benefit recipients;

(b) multiplying the quotient obtained in subsection (2)(a) by the individual eligible member's total service credits;

(c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly annuity from actuarial tables adopted by the board; and

(d) applying the provisions contained in subsections (3) and (4).

(3) If a member had elected to receive an optional retirement benefit, the amount of the member's postretirement adjustment must be adjusted by the appropriate optional factor.

(4) If more than one contingent annuitant is receiving a member's retirement benefit, the postretirement adjustment must be divided in the same manner as the member's retirement benefit.

History: En. Sec. 3, Ch. 115, L. 1989; amd. Sec. 92, Ch. 265, L. 1993; Sec. 19-3-1111, MCA 1991; redes. 19-3-1603 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in three places substituted references to benefit recipient for references to member or beneficiary; in (2), (2)(a), and (3) substituted "postretirement adjustment" for "postretirement allowance"; in (2)(a), after "service", inserted "credit"; in (2)(b), before "member's", inserted "individual eligible" and substituted "total service credits" for "total years of service"; in (3) substituted "optional retirement benefit" for "optional retirement allowance"; in (4), in two places, substituted "retirement benefit" for "retirement allowance" and substituted "contingent annuitant" for "beneficiary"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1604. Ad hoc cost-of-living increase. A member of the retirement system who retired on or before July 1, 1991, or the member's beneficiary is entitled to a 5% increase in the monthly service, disability, or survivorship benefit paid to the member or the member's beneficiary.

History: En. Sec. 1, Ch. 367, L. 1993.

Compiler's Comments

Effective Date: Section 3, Ch. 367, L. 1993, provided: "[This act] is effective July 1, 1993."

CHAPTER 4

TEACHERS' RETIREMENT

(Renumbered and Repealed)

Chapter Compiler's Comments

Sections Renumbered and Repealed:

19-4-101. Renumbered 19-20-101 by Code Commissioner, 1993.

19-4-102. Renumbered 19-20-102 by Code Commissioner, 1993.

19-4-103. Renumbered 19-20-103 by Code Commissioner, 1993.

19-4-104. Renumbered 19-20-104 by Code Commissioner, 1993.

19-4-105. Renumbered 19-20-105 by Code Commissioner, 1993.

19-4-201. Renumbered 19-20-201 by Code Commissioner, 1993.

19-4-202. Renumbered 19-20-202 by Code Commissioner, 1993.

19-4-203. Renumbered 19-20-203 by Code Commissioner, 1993.

19-4-204. Renumbered 19-20-204 by Code Commissioner, 1993.

19-4-205. Renumbered 19-20-205 by Code Commissioner, 1993.

19-4-206. Renumbered 19-20-206 by Code Commissioner, 1993.

19-4-207. Renumbered 19-20-207 by Code Commissioner, 1993.

19-4-208. Renumbered 19-20-208 by Code Commissioner, 1993.

19-4-301. Renumbered 19-20-301 by Code Commissioner, 1993.

19-4-302. Renumbered 19-20-302 by Code Commissioner, 1993.

19-4-303. Renumbered 19-20-303 by Code Commissioner, 1993.

19-4-304. Renumbered 19-20-304 by Code Commissioner, 1993.

19-4-305. Repealed. Sec. 2, Ch. 210, L. 1983.

19-4-401. Renumbered 19-20-401 by Code Commissioner, 1993.

19-4-402. Renumbered 19-20-402 by Code Commissioner, 1993.

19-4-403. Renumbered 19-20-403 by Code Commissioner, 1993.

19-4-404. Renumbered 19-20-404 by Code Commissioner, 1993.

19-4-405. Renumbered 19-20-405 by Code Commissioner, 1993.

19-4-406. Renumbered 19-20-406 by Code Commissioner, 1993.

19-4-407. Renumbered 19-20-407 by Code Commissioner, 1993.

19-4-408. Renumbered 19-20-408 by Code Commissioner, 1993.

19-4-409. Renumbered 19-20-409 by Code Commissioner, 1993.

19-4-410. Renumbered 19-20-410 by Code Commissioner, 1993.

19-4-411. Renumbered 19-20-411 by Code Commissioner, 1993.

19-4-412. Renumbered 19-20-412 by Code Commissioner, 1993.

19-4-413. Renumbered 19-20-413 by Code Commissioner, 1993.

19-4-501. Renumbered 19-20-501 by Code Commissioner, 1993.

19-4-502. Renumbered 19-20-502 by Code Commissioner, 1993.

19-4-503. Renumbered 19-20-503 by Code Commissioner, 1993.

19-4-504. Renumbered 19-20-504 by Code Commissioner, 1993.

19-4-601. Renumbered 19-20-601 by Code Commissioner, 1993.

19-4-602. Renumbered 19-20-602 by Code Commissioner, 1993.

19-4-603. Renumbered 19-20-603 by Code Commissioner, 1993.

19-4-604. Repealed. Sec. 2, Ch. 251, L. 1981.

19-4-605. Renumbered 19-20-605 by Code Commissioner, 1993.

19-4-606. Renumbered 19-20-606 by Code Commissioner, 1993.

19-4-701. Renumbered 19-20-701 by Code Commissioner, 1993.

19-4-702. Renumbered 19-20-702 by Code Commissioner, 1993.

19-4-703. Renumbered 19-20-703 by Code Commissioner, 1993.

19-4-704. Renumbered 19-20-704 by Code Commissioner, 1993.

19-4-705. Renumbered 19-20-705 by Code Commissioner, 1993.

19-4-706. Renumbered 19-20-706 by Code Commissioner, 1993.

19-4-707. Renumbered 19-20-707 by Code Commissioner, 1993.

19-4-708. Renumbered 19-20-708 by Code Commissioner, 1993.

19-4-709. Renumbered 19-20-709 by Code Commissioner, 1993.

19-4-710. Renumbered 19-20-710 by Code Commissioner, 1993.

19-4-711. Renumbered 19-20-711 by Code Commissioner, 1993.

19-4-712. Renumbered 19-20-712 by Code Commissioner, 1993.

19-4-713. Renumbered 19-20-713 by Code Commissioner, 1993.

19-4-801. Renumbered 19-20-801 by Code Commissioner, 1993.

19-4-802. Renumbered 19-20-802 by Code Commissioner, 1993.

19-4-803. Repealed. Sec. 2, Ch. 210, L. 1983.

19-4-804. Renumbered 19-20-804 by Code Commissioner, 1993.

19-4-901. Renumbered 19-20-901 by Code Commissioner, 1993.

19-4-902. Renumbered 19-20-902 by Code Commissioner, 1993.

19-4-903. Renumbered 19-20-903 by Code Commissioner, 1993.

19-4-904. Renumbered 19-20-904 by Code Commissioner, 1993.

19-4-905. Renumbered 19-20-905 by Code Commissioner, 1993.

19-4-1001. Renumbered 19-20-1001 by Code Commissioner, 1993.

19-4-1002. Renumbered 19-20-1002 by Code Commissioner, 1993.

19-4-1101. Renumbered 19-20-1101 by Code Commissioner, 1993.

Histories of Repealed Sections:

19-4-305. En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(c).

19-4-604. En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(3).

19-4-803. En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(b); amd. Sec. 5, Ch. 114, L. 1979.

CHAPTER 5

JUDGES' RETIREMENT

Part 1 — General Provisions

19-5-101. Definitions.
19-5-102. Judges' retirement system established.
19-5-103. Call of retired judge for duty.
19-5-104. Renumbered 19-2-1009.
19-5-105. Short title.

Part 2 — Administration
(Repealed. Sec. 236, Ch. 265, L. 1993)

Part 3 — Eligibility, Membership, and Vesting

19-5-301. Membership — inactive vested members — inactive nonvested members.
19-5-302. Repealed.
19-5-303. Repealed.
19-5-304. Repealed.

Part 4 — Contributions and Refunds

19-5-401. Payments into pension trust fund.
19-5-402. Member's contribution.
19-5-403. Refunds in case of resignation or discharge.
19-5-404. Contributions by state.
19-5-405 through 19-5-408. Repealed.

Part 5 — Service Retirement Benefits

19-5-501. Eligibility for service retirement.
19-5-502. Service retirement benefit.
19-5-503. Involuntary retirement benefit.
19-5-504. Repealed.

Part 6 — Disability Retirement Benefits

19-5-601. Disability retirement benefit.
19-5-602. Repealed.
19-5-603. Renumbered 19-5-801 by Code Commissioner, 1993.
19-5-604. Renumbered 19-5-802 by Code Commissioner, 1993.
19-5-605 through 19-5-610 reserved.
19-5-611. Renumbered 19-2-406.
19-5-612. Medical examination of disability retiree — cancellation of benefit.

Part 7 — Optional Benefit Payments

19-5-701. Optional forms of benefits.
19-5-702 through 19-5-706. Repealed.

Part 8 — Survivorship Benefits and Death Payments

19-5-801. Payments upon employment-related death.
19-5-802. Payments in case of death from other causes.

Part 1
General Provisions

19-5-101. Definitions. Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Compensation" means remuneration as defined in 2-16-404, 3-5-211, and 3-7-222 paid to a member.

(2) "Current salary" means the current compensation for the office retired from.

(3) "Involuntary retirement" means a retirement not for cause and before retirement age.

(4) "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter.

History: En. Sec. 1, Ch. 289, L. 1967; amd. Sec. 1, Ch. 218, L. 1969; amd. Sec. 1, Ch. 251, L. 1975; amd. Sec. 1, Ch. 63, L. 1977; amd. Sec. 5, Ch. 132, L. 1977; R.C.M. 1947, 93-1107; amd. Sec. 4, Ch. 282, L. 1983; amd. Sec. 3, Ch. 45, L. 1987; amd. Sec. 6, Ch. 196, L. 1989; amd. Sec. 95, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 inserted definition of compensation; deleted definition of accumulated deductions that read: ""Accumulated deductions" means the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon"; deleted definition of actuarial equivalent that read: ""Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; deleted definition of beneficiary that read: ""Beneficiary" means the person whom the contributor nominates by written designation, witnessed and filed with the board"; deleted definition of Board that read: ""Board" means the public employees' retirement board"; deleted definition of contributor that read: ""Contributor" means any person who has accumulated deductions in the fund standing to his credit"; substituted definition of current salary for former definition of final salary that read: ""Final salary" means the annual current salary for the office retired from"; deleted definition of fund that read: ""Fund" means the Montana judges' retirement system pension trust fund"; deleted definition of member's annuity that read: ""Member's annuity" means payments for life derived from contributions made by the contributor"; in definition of retired judge substituted "retirement benefit" for "retirement allowance"; deleted definition of retirement allowance that read: ""Retirement allowance" means the state annuity plus the member's annuity"; and deleted definition of state annuity that read: ""State annuity" means payments for life derived from contributions made by the state of Montana." Amendment effective July 1, 1993.

19-5-102. Judges' retirement system established. There is a retirement system known as the judges' retirement system, which is governed by the provisions of chapter 2 and this chapter.

History: En. 93-1107.1 by Sec. 2, Ch. 63, L. 1977; R.C.M. 1947, 93-1107.1; amd. Sec. 94, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 before "judges' retirement system" deleted "Montana" and inserted reference to chapter 2. Amendment effective July 1, 1993.

19-5-103. Call of retired judge for duty. (1) Every judge or justice who has voluntarily retired after 8 years of service shall, if physically and mentally able, be subject to call by the supreme court or the chief justice to aid and assist the supreme court, any district court, or any water court under directions as the supreme court may give, including the examination of the facts, cases, and authorities cited, and the preparation of opinions for and on behalf of the supreme court, district court, or water court, or to serve as water judge.

The opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of the court. The court and the retired judge or justice may, subject to any rule that the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases that are not inconsistent with the constitution of the state.

(2) A retired judge or justice, when called to service, must be reimbursed for actual expenses, if any, in responding to the call. In addition, for each day of service a retired justice or judge is entitled to receive compensation in an amount equal to one-twentieth of the monthly salary then currently applicable to the judicial position in which the service is rendered minus an amount equal to one-twentieth of the monthly retirement benefit the retired justice or judge is receiving, if any, for each day of service rendered.

History: En. Sec. 24, Ch. 289, L. 1967; R.C.M. 1947, 93-1130; amd. Sec. 1, ch. 254, L. 1979; amd. Sec. 5, Ch. 80, L. 1981; amd. Sec. 3, Ch. 256, L. 1983; amd. Sec. 1, Ch. 425, L. 1983; amd. Sec. 96, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (2), near beginning of first sentence after "service", deleted "as herein provided" and near end of second sentence substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

19-5-104. Renumbered 19-2-1009. Sec. 238, Ch. 265, L. 1993.

19-5-105. Short title. This chapter may be cited as the "Judges' Retirement Act".

History: En. Sec. 93, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 2

Administration
(Repealed. Sec. 236, Ch. 265, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

19-5-201. En. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; R.C.M. 1947, 93-1112(1), (2).

19-5-202. En. Sec. 4, Ch. 289, L. 1967; amd. Sec. 1, Ch. 23, L. 1969; amd. Sec. 3, Ch. 63, L. 1977; R.C.M. 1947, 93-1110; amd. Sec. 1, Ch. 235, L. 1981; amd. Sec. 5, Ch. 282, L. 1983.

Part 3

Eligibility, Membership, and Vesting

19-5-301. Membership — inactive vested members — inactive nonvested members. (1) Except for a judge or justice who elected in writing to remain under the public employees' retirement system on or before October 1, 1985, a judge of a district court, a justice of the supreme court, and the chief water judge provided for in 3-7-221 must be members of the Montana judges' retirement system.

(2) A judge pro tempore is not eligible for active membership in the retirement system.

(3) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(4) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. Sec. 7, Ch. 289, L. 1967; amd. Sec. 6, Ch. 63, L. 1977; R.C.M. 1947, 93-1113(1), (2); amd. Sec. 1, Ch. 298, L. 1985; amd. Sec. 1, Ch. 364, L. 1991; amd. Sec. 97, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) substituted present text regarding election to remain under public employees' retirement system for former (1) and (2) that read: "(1) A judge or justice who was a member of the PERS prior to December 31, 1984, may elect to remain under that system by notifying the public employees' retirement board in writing of the election on or before October 1, 1985.

(2) Every other judge of a district court, justice of the supreme court, and the chief water judge provided for in 3-7-221 must be a member of the Montana judges' retirement system"; inserted (2) regarding judge pro tempore; inserted (3) regarding inactive vested member; and inserted (4) regarding inactive nonvested member. Amendment effective July 1, 1993.

19-5-302. Repealed. Sec. 236, Ch. 265, L. 1993.

History: (1)En. Sec. 8, Ch. 289, L. 1967; Sec. 93-1114, R.C.M. 1947; (2)En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; Sec. 93-1125, R.C.M. 1947; R.C.M. 1947, 93-1114, 93-1125(part).

19-5-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 7, Ch. 289, L. 1967; amd. Sec. 6, Ch. 63, L. 1977; R.C.M. 1947, 93-1113(3).

19-5-304. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 22, Ch. 289, L. 1967; amd. Sec. 9, Ch. 63, L. 1977; R.C.M. 1947, 93-1128.

Part 4

Contributions and Refunds

19-5-401. Payments into pension trust fund. All appropriations made by the state of Montana, all contributions by members, and all interest on and increase of the investments and money in the pension trust fund must be paid to the division, which shall credit the payments to the fund. These funds may be commingled with other pension trust funds of the division, but separate accounts must be maintained for the judges' retirement system.

History: En. Sec. 5, Ch. 289, L. 1967; amd. Sec. 4, Ch. 63, L. 1977; R.C.M. 1947, 93-1111; amd. Sec. 98, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence substituted "pension trust fund" for "fund" and substituted "division" for "public employees' retirement division of the department of administration"; in second sentence, after "commingled with", inserted "other pension trust", substituted "division" for "PERS", and before "judges' retirement system" deleted "Montana"; and made minor changes in style. Amendment effective July 1, 1993.

19-5-402. Member's contribution. (1) Each member shall contribute into the fund a sum equal to 7% of the member's monthly compensation beginning on the first day of the member's term.

(2) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code, as amended and applicable on July 1, 1991, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1991.

(3) The member's contribution picked up by the employer is the member's contribution for all purposes of the retirement system, except for the determination of a tax upon a distribution from the retirement system. The contributions must become part of the member's accumulated contributions but must be accounted for separately from the previously accumulated contributions.

(4) The member's contributions picked up by the employer are payable from the same source used to pay compensation to the member and must be included in the member's monthly compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. Sec. 9, Ch. 289, L. 1967; R.C.M. 1947, 93-1115; amd. Sec. 2, Ch. 524, L. 1983; amd. Sec. 1, Ch. 74, L. 1991; amd. Sec. 99, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted (1) regarding member's contribution rate for former subsection that read: "(1) Every member shall be required to contribute into the fund a sum equal to 6% of his monthly salary, except that a member elected or appointed to office after July 1, 1983, shall be required to contribute into the fund a sum equal to 7% of his monthly salary beginning on the first day of his term. This sum shall be deducted from his salary and credited to his account in the fund." Amendment effective July 1, 1993.

19-5-403. Refunds in case of resignation or discharge. When a member willingly resigns or is discharged for cause before becoming entitled to a retirement benefit, the accumulated contributions standing to the member's credit must be paid to the member upon the board's receipt of the member's written application for a refund.

History: En. Sec. 16, Ch. 289, L. 1967; R.C.M. 1947, 93-1122; amd. Sec. 1, Ch. 50, L. 1991; amd. Sec. 100, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 near beginning substituted "member" for "contributor", substituted "retirement benefit" for "retirement allowance", and substituted "accumulated contributions" for "accumulated deductions"; and made minor changes in style. Amendment effective July 1, 1993.

19-5-404. Contributions by state. (1) The state of Montana shall contribute monthly to the pension trust fund a sum equal to 6% of the compensation of each member. In addition, the clerk of each district court shall transmit 68% of certain filing fees as required under 25-1-201(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6) to the state, which shall first deposit in the pension trust fund an amount equal to 34.71% of the total compensation paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the division to be credited to the pension trust fund.

(2) The state of Montana shall contribute monthly from the renewable resource grant and loan program account in the state special revenue fund to the judges' pension trust fund an amount equal to 34.71% of the compensation paid to the chief water court judge.

History: En. Sec. 10, Ch. 289, L. 1967; amd. Sec. 7, Ch. 63, L. 1977; amd. Sec. 2, Ch. 548, L. 1977; R.C.M. 1947, 93-1116(part); amd. Sec. 3, Ch. 524, L. 1983; amd. Sec. 2, Ch. 318, L. 1987; amd. Sec. 2, Ch. 642, L. 1987; amd. Secs. 1, 2, Ch. 664, L. 1989; amd. Sec. 2, Ch. 344, L. 1991; (2)En. Sec. 2, Ch. 364, L. 1991; amd. Sec. 101, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in three places before "fund", inserted "pension trust", near end of first sentence, after "6% of the", substituted "compensation" for "salary", in second sentence, after "34.71% of the", substituted "total compensation" for "salaries", in third sentence substituted "division" for "public employees' retirement division of the department of administration", and deleted last sentence that read: "The money from court fees collected pursuant to this section is statutorily appropriated, as provided in 17-7-502, to the supreme court for deposit in the judges' retirement fund"; and in (2) substituted "judges' pension trust fund" for "judges' retirement fund" and after "34.71% of the" substituted "compensation" for "salary". Amendment effective July 1, 1993.

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, Laws 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, Laws 1993.

19-5-405 through 19-5-408. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-5-405. Ap. p. Sec. 10, Ch. 289, L. 1967; amd. Sec. 7, Ch. 63, L. 1977; amd. Sec. 548, L. 1977; Sec. 93-1116, R.C.M. 1947; Ap. p. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; Sec. 93-1112, R.C.M. 1947; R.C.M. 1947, 93-1112(3), 93-1116(part).

19-5-406. En. Sec. 27, Ch. 289, L. 1967; R.C.M. 1947, 93-1132.

19-5-407. En. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; R.C.M. 1947, 93-1112(4).

19-5-408. En. Sec. 3, Ch. 138, L. 1991.

Part 5

Service Retirement Benefits

19-5-501. Eligibility for service retirement. (1) Any member who has at least 5 years of membership service and has reached the age of 65 may retire and receive the proportional retirement benefits provided in 19-5-502.

(2) Retirement benefits may not be approved by the board while the member is drawing full compensation as a judge or justice. However, benefits may not be withheld for receiving compensation as a judge pro tempore.

History: (1)En. Sec. 11, Ch. 289, L. 1967; Sec. 93-1117, R.C.M. 1947; (2)En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; Sec. 93-1125, R.C.M. 1947; R.C.M. 1947, 93-1117, 93-1125(part); amd. Sec. 10, Ch. 663, L. 1987; amd. Sec. 102, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in three places substituted references to retirement benefits or benefits for references to retirement allowances or allowances; near beginning of (1) substituted "has at least 5 years of membership service" for "has completed at least 5 years or more service"; and made minor changes in style. Amendment effective July 1, 1993.

19-5-502. Service retirement benefit. Upon retirement from service, a member must receive a service retirement benefit equal to 3 1/3% per year of the member's current salary for the first 15 years of credited service and 1.785% per year for each year of credited service after 15 years.

History: En. Sec. 12, Ch. 289, L. 1967; R.C.M. 1947, 93-1118; amd. Sec. 3, Ch. 664, L. 1989; amd. Sec. 103, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present text regarding service retirement benefit for former section that read: "Upon retirement from service, a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of retirement. The state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of 3 1/3% per year of his final salary for the first 15 years' service and 1.785% per year for each year's service after 15 years." Amendment effective July 1, 1993.

19-5-503. Involuntary retirement benefit. (1) If a member is involuntarily discontinued from service after having completed 5 years of membership service but before reaching retirement age, the member shall, upon filing an application in the manner prescribed by the board, be paid an involuntary retirement benefit of equivalent actuarial value to the service retirement benefit payable under 19-5-502 then standing to the member's credit.

(2) If a member elected or appointed to office prior to July 1, 1983, is involuntarily discontinued from service after having earned at least 12 years of service credit but before reaching service retirement age, the member must, upon filing an application in the manner prescribed by the board, be paid the service retirement benefit provided for in 19-5-502.

(3) If a member elected or appointed to office after July 1, 1983, is involuntarily discontinued from service after having earned at least 12 years of service credit but before reaching service retirement age, the member may apply for and receive an involuntary retirement benefit that is the actuarial equivalent of benefits pursuant to subsection (1).

History: En. Sec. 14, Ch. 289, L. 1967; amd. Sec. 1, Ch. 89, L. 1975; amd. Sec. 8, Ch. 63, L. 1977; R.C.M. 1947, 93-1120; amd. Sec. 4, Ch. 524, L. 1983; amd. Sec. 104, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), near beginning, substituted "member" for "contributor", substituted "membership service" for "total service", and at end, after "be paid", substituted remainder of subsection regarding involuntary retirement benefit for former text that read: "whichever of the following allowances that he elects:

(a) the full amount of his accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus an annuity which is the actuarial equivalent of the present value of the state annuity then standing to his credit"; in (2), near beginning, substituted "member" for "contributor", substituted "having earned at least 12 years of service credit" for "having completed 12 years of total service", before "retirement age" inserted "service", and at end, after "be paid", substituted remainder of subsection regarding service retirement benefit for former text that read: "whichever of the following allowances that he elects:

(a) the full amount of his accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus a state annuity in an amount which, when added to the member's annuity, will provide a total annuity equal to the allowance provided for in 19-5-502"; in (3), near beginning, substituted "member" for "contributor", substituted "having earned at least 12 years of service credit" for "having completed 12 years of total service", before "retirement age" inserted "service", near end, after "receive", inserted "an involuntary retirement benefit that is the actuarial equivalent of", and after "benefits" deleted "under this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

19-5-504. Repealed. Sec. 1, Ch. 12, L. 1987.

History: En. Sec. 15, Ch. 289, L. 1967; R.C.M. 1947, 93-1121.

Part 6
Disability Retirement Benefits

19-5-601. Disability retirement benefit. In case of the disability of a member, a disability retirement benefit must be granted the member in an amount actuarially equivalent to the service retirement benefit standing to the member's credit at the time of the member's disability retirement. If the disability is a direct result of any service to the Montana judiciary in the line of duty, the member must receive a benefit equal to one-half of the member's final current salary or the benefit provided in 19-5-502, whichever is greater.

History: En. Sec. 13, Ch. 289, L. 1967; R.C.M. 1947, 93-1119; amd. Sec. 105, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present text regarding disability retirement benefit for former section that read: "In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. If such total disability is a direct result of any service to the Montana judiciary in line of duty, then such judge or justice who is totally and permanently disabled shall be retired on total retirement allowance of a minimum of one-half of his final salary or the allowance provided in 19-5-502, whichever is greater. In the event of any disability not caused in the line of duty after attaining the age of 60 years, the maximum monthly payment shall be the retirement allowance as provided in 19-5-502." Amendment effective July 1, 1993.

19-5-602. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 21, Ch. 289, L. 1967; R.C.M. 1947, 93-1127.

19-5-603. Renumbered 19-5-801 by Code Commissioner, 1993.

19-5-604. Renumbered 19-5-802 by Code Commissioner, 1993.

19-5-605 through 19-5-610 reserved.

19-5-611. Renumbered 19-2-406. Sec. 238, Ch. 265, L. 1993.

19-5-612. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) The cancellation of a disability retirement benefit because a recipient is no longer incapacitated may not prejudice any right of the recipient to a retirement benefit other than a disability retirement benefit.

History: En. Sec. 2, Ch. 597, L. 1981; amd. Sec. 106, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in four places substituted references to disability retirement benefit for references to disability retirement allowance, retirement allowance, or disability allowance; and made minor changes in style. Amendment effective July 1, 1993.

Part 7
Optional Benefit Payments

19-5-701. Optional forms of benefits. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects, must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit payable to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4—upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement.

History: En. Sec. 25, Ch. 289, L. 1967; amd. Sec. 10, Ch. 63, L. 1977; R.C.M. 1947, 93-1131; amd. Sec. 1, Ch. 126, L. 1987; amd. Sec. 109, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) substituted present text regarding optional forms of benefits for former (1) and (2) that read: "(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or a beneficiary may elect or, prior to the approval of a previous election, revoke or change the previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 3—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 4—such other benefits will be paid, either to his beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board"; inserted (2) regarding written application; inserted (3) regarding cancellation of election; and inserted (4) regarding death of member after retirement and within 30 days from election or changed election. Amendment effective July 1, 1993.

19-5-702 through 19-5-706. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-5-702. En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; R.C.M. 1947, 93-1125(part).

19-5-703. En. Sec. 23, Ch. 289, L. 1967; R.C.M. 1947, 93-1129(part).

19-5-704. En. Sec. 20, Ch. 289, L. 1967; amd. Sec. 10, Ch. 214, L. 1977; R.C.M. 1947, 93-1126; amd. Sec. 2, Ch. 74, L. 1991; amd. Sec. 8, Ch. 823, L. 1991.

19-5-705. En. 93-1126.1 by Sec. 11, Ch. 214, L. 1977; R.C.M. 1947, 93-1126.1.

19-5-706. En. Sec. 1, Ch. 14, L. 1987.

Part 8

Survivorship Benefits and Death Payments

19-5-801. Payments upon employment-related death. If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service, a survivorship benefit must be paid to the member's designated beneficiary. The survivorship benefit is the actuarial equivalent of a member's retirement benefit provided for in 19-5-502.

History: En. Sec. 17, Ch. 289, L. 1967; R.C.M. 1947, 93-1123; amd. Sec. 107, Ch. 265, L. 1993; Sec. 19-5-603, MCA 1991; redes. 19-5-801 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 near beginning substituted "member" for "contributor", substituted "service" for "employment", substituted "survivorship benefit" for "retirement allowance", before "beneficiary" inserted "designated", and substituted second sentence regarding survivorship benefit for former second sentence that read: "Such retirement allowance shall consist of:

(1) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and

(2) the actuarial equivalent of a state annuity which, when added to the member's annuity, will provide a total annuity equal to the allowance provided for in 19-5-502"; and made minor changes in style. Amendment effective July 1, 1993.

19-5-802. Payments in case of death from other causes. (1) If a retired member who chose a regular retirement benefit dies before receiving payments equal to the present value of the member's retirement benefit as it was at the time of the member's retirement, the balance must be paid to the member's designated beneficiary in a lump sum. At the designated beneficiary's request, the lump sum may be paid as an actuarially equivalent annuity that will not be subject to increases for any purpose.

(2) If a member dies before reaching retirement age, the member's designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the options as provided in 19-5-503.

History: En. Sec. 18, Ch. 289, L. 1967; R.C.M. 1947, 93-1124; amd. Sec. 108, Ch. 265, L. 1993; Sec. 19-5-604, MCA 1991; redes. 19-5-802 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), near beginning of first sentence, substituted "member who chose a regular retirement benefit" for "judge or justice", substituted "payments equal to" for "in payments", substituted "member's retirement benefit" for "member's annuity and the state annuity", near end, before "beneficiary", inserted "designated", and after "beneficiary" inserted "in a lump sum" and inserted second sentence regarding actuarially equivalent annuity; in (2), before "beneficiary", inserted "designated" and after "entitled to" inserted "a monthly survivorship benefit that is"; and made minor changes in style. Amendment effective July 1, 1993.

CHAPTER 6

HIGHWAY PATROL OFFICERS' RETIREMENT

Part 1 — General Provisions

19-6-101. Definitions.
19-6-102. Highway patrol officers' retirement system established.
19-6-103. Repealed.
19-6-104. Repealed.
19-6-105. Repealed.
19-6-106. Short title.

Part 2 — Administration (Repealed)

19-6-201. Repealed.
19-6-202. Repealed.
19-6-203. Repealed.
19-6-204. Terminated.

Part 3 — Eligibility, Membership, and Vesting

19-6-301. Membership — inactive vested members — inactive nonvested members.
19-6-302. Repealed.
19-6-303. Repealed.
19-6-304. Renumbered 19-6-801 by Code Commissioner, 1993.
19-6-305. Renumbered 19-6-802 by Code Commissioner, 1993.
19-6-306. Renumbered 19-6-803 by Code Commissioner, 1993.

Part 4 — Contributions and Refunds

19-6-401. Payments into pension trust fund.
19-6-402. Member's contribution.
19-6-403. Refund of member's contribution.
19-6-404. State's contribution.
19-6-405 through 19-6-409. Repealed.

Part 5 — Service Retirement Benefits

19-6-501. Eligibility and application for service retirement benefit — commencement of benefit.
19-6-502. Service retirement benefit.
19-6-503. Early retirement benefit for member discontinued from service other than for cause.
19-6-504. Repealed.
19-6-505. Payment of retirement benefits.
19-6-506. Repealed.

Part 6 — Disability Retirement Benefits

19-6-601. Disability retirement benefit.
19-6-602. Repealed.
19-6-603. Renumbered 19-6-901 by Code Commissioner, 1993.
19-6-604. Renumbered 19-6-902 by Code Commissioner, 1993.
19-6-605 through 19-6-610 reserved.
19-6-611. Repealed.
19-6-612. Medical examination of disability retiree — cancellation of benefit.

Part 7 — Minimum Benefits and Benefit Increases

19-6-701. Repealed.
19-6-702 through 19-6-706. Repealed.
19-6-707. Minimum monthly benefit.
19-6-708. Repealed.
19-6-709. Supplemental benefits for certain retirees.

Part 8 — Service Credit

19-6-801. Election to qualify military service.
19-6-802. Qualification of other Montana public service.
19-6-803. Election to qualify law enforcement service performed in another state.

Part 9 — Survivorship Benefits and Death Payments

19-6-901. Survivorship benefits — employment-related death.
19-6-902. Survivorship benefits — death from other causes.
19-6-903. Death payments in absence of survivors.

Part 1
General Provisions

19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any deductions have been made and exclusive of maintenance, allowances, and expenses.

(2) "Dependent child" means an unmarried child of a deceased retired member, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, sick leave, and annual leave paid to an employee upon termination of service may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's death.

(5) "Survivor" means a surviving spouse or dependent child of a member.

History: En. Sec. 1, Ch. 37, L. 1945; amd. Sec. 1, Ch. 243, L. 1955; amd. Sec. 201, Ch. 147, L. 1963; amd. Sec. 5, Ch. 326, L. 1974; amd. Sec. 1, Ch. 361, L. 1974; amd. Sec. 1, Ch. 65, L. 1977; amd. Sec. 1, Ch. 332, L. 1977; R.C.M. 1947, 31-201; amd. Secs. 6, 7, Ch. 114, L. 1979; amd. Sec. 1, Ch. 206, L. 1981; amd. Sec. 6, Ch. 282, L. 1983; amd. Sec. 1, Ch. 86, L. 1985; amd. Sec. 1, Ch. 278, L. 1985; amd. Sec. 4, Ch. 45, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 112, Ch. 265, L. 1993; amd. Sec. 12, Ch. 640, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 265 inserted definitions of compensation and survivor; deleted definition of account that read: ""Account" means the Montana highway patrol officers' retirement pension trust fund"; deleted definition of accumulated deductions that read: ""Accumulated deductions" means the total of the amounts deducted from the salary of a member, paid into the account, and standing to his credit in the account, together with the regular interest thereon"; deleted definition of actuarial equivalent that read: ""Actuarial equivalent" means a benefit of equal value when computed on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; deleted definition of beneficiary that read: ""Beneficiary" means a surviving spouse or dependent child or, if there is no surviving spouse or dependent child, a person nominated to receive benefits under 19-6-602"; deleted definition of Board that read: ""Board" means the public employees' retirement board provided for in 2-15-1009"; deleted definition of Department that read: ""Department" means the public employees' retirement division of the department of administration"; in introductory clause of definition of dependent child substituted "member" for "patrol officer"; substituted definition of final average salary for definition of final salary and in first sentence substituted "monthly compensation" for "annual compensation", after "compensation received by a member" deleted "before any deductions have been made and exclusive of maintenance, allowances, and expenses", and at end substituted "months served" for "years served" and in second sentence substituted "termination of service" for "termination of employment", substituted "retirement benefit" for "retirement allowance", and at end substituted "final average salary" for "final salary"; deleted definition of member that read: ""Member" means a person who has accumulated deductions in the account standing to his credit"; deleted definition of member's annuity that read: ""Member's annuity" means payments for life derived from contributions made by the member"; deleted definition of retired patrol officer that read: ""Retired patrol officer" means a person in receipt of a retirement allowance under this chapter"; deleted definition of retirement age that read: ""Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol"; deleted definition of retirement allowance that read: ""Retirement allowance" means the state annuity plus the member's annuity"; deleted definition of state annuity that read: ""State annuity" means payments for life derived from contributions made by the state of Montana"; in definition of surviving spouse, in two places, substituted references to retired member for references to retired patrol officer; and made minor changes in style. Amendment effective July 1, 1993.

Section 12 (a coordination instruction), Ch. 640, L. 1993, in definition of final average salary, in second sentence before "sick leave", inserted "severance pay".

19-6-102. Highway patrol officers' retirement system established. There is a retirement system known as the highway patrol officers' retirement system, which is governed by the provisions of chapter 2 and this chapter.

History: En. Sec. 31-201.1 by Sec. 2, Ch. 65, L. 1977; R.C.M. 1947, 31-201.1; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 111, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 before "highway patrol officers' retirement system" deleted "Montana" and inserted reference to chapter 2. Amendment effective July 1, 1993.

19-6-103. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 27, Ch. 37, L. 1945; R.C.M. 1947, 31-227.

19-6-104. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 24, Ch. 37, L. 1945; amd. Sec. 12, Ch. 326, L. 1974; R.C.M. 1947, 31-224(1)(a), (2).

19-6-105. Repealed. Sec. 5, Ch. 206, L. 1981.

History: En. Sec. 26, Ch. 37, L. 1945; R.C.M. 1947, 31-226; amd. Sec. 7, Ch. 114, L. 1979.

19-6-106. Short title. This chapter may be cited as "The Highway Patrol Officers' Retirement Act".

History: En. Sec. 110, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 2
Administration (Repealed)

19-6-201. Repealed. Sec. 236, Ch. 256, L. 1993.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(part).

19-6-202. Repealed. Sec. 236, Ch. 256, L. 1993.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(part); amd. Sec. 7, Ch. 114, L. 1979.

19-6-203. Repealed. Sec. 236, Ch. 256, L. 1993.

History: En. Sec. 4, Ch. 37, L. 1945; R.C.M. 1947, 31-204; amd. Sec. 2, Ch. 235, L. 1981; amd. Sec. 14, Ch. 79, L. 1983; amd. Sec. 7, Ch. 282, L. 1983.

19-6-204. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

Part 3
Eligibility, Membership, and Vesting

19-6-301. Membership — inactive vested members — inactive nonvested members. (1) All members of the Montana highway patrol, including the supervisor and assistant supervisors, must be members of the retirement system.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. Sec. 7, Ch. 37, L. 1945; amd. Sec. 8, Ch. 326, L. 1974; amd. Sec. 3, Ch. 65, L. 1977; R.C.M. 1947, 31-207; amd. Sec. 113, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 inserted (2) regarding inactive vested member; and inserted (3) regarding inactive nonvested member. Amendment effective July 1, 1993.

19-6-302. Repealed. Sec. 236, Ch. 265, L. 1993.

History: (1)En. Sec. 8, Ch. 37, L. 1945; amd. Sec. 4, Ch. 243, L. 1955; amd. Sec. 4, Ch. 65, L. 1977; Sec. 31-208, R.C.M. 1947; (2)En. Sec. 20, Ch. 37, L. 1945; amd. Sec. 3, Ch. 332, L. 1977; Sec. 31-220, R.C.M. 1947; R.C.M. 1947, 31-208(part), 31-220(part); amd. Sec. 7, Ch. 114, L. 1979.

19-6-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955; amd. Sec. 11, Ch. 326, L. 1974; amd. Sec. 6, Ch. 361, L. 1974; amd. Sec. 8, Ch. 65, L. 1977; R.C.M. 1947, 31-223(1).

19-6-304. Renumbered 19-6-801 by Code Commissioner, 1993.

19-6-305. Renumbered 19-6-802 by Code Commissioner, 1993.

19-6-306. Renumbered 19-6-803 by Code Commissioner, 1993.

Part 4
Contributions and Refunds

19-6-401. Payments into pension trust fund. All appropriations made by the state, all contributions by members, in the amount specified, all interest on and increase of the investments and money under this pension trust fund, and a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121 must be paid to the pension trust fund.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963; amd. Sec. 6, Ch. 326, L. 1974; R.C.M. 1947, 31-205(part); amd. Sec. 8, Ch. 282, L. 1983; amd. Sec. 5, Ch. 277, L. 1985; amd. Sec. 2, Ch. 62, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 816, L. 1991; amd. Sec. 114, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 near beginning, after "members", deleted "of the Montana highway patrol" and in two places substituted "pension trust fund" for "account". Amendment effective July 1, 1993.

19-6-402. Member's contribution. (1) Each member shall contribute into the pension trust fund a sum equal to 9% of the member's monthly compensation, which must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and compensation as used to define the member's final average salary in 19-6-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963; amd. Sec. 2, Ch. 361, L. 1974; R.C.M. 1947, 31-209; amd. Sec. 2, Ch. 278, L.

1985; amd. Sec. 2, Ch. 294, L. 1985; amd. Sec. 10, Ch. 464, L. 1985; amd. Sec. 2, Ch. 816, L. 1991; amd. Sec. 115, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in two places, substituted "pension trust fund" for "account" and substituted "monthly compensation" for "monthly salary"; in (4), near end of first sentence, substituted "final average salary" for "final salary"; and made minor changes in style. Amendment effective July 1, 1993.

19-6-403. Refund of member's contribution. If a member willingly resigns or is discharged for cause before becoming entitled to a retirement benefit, the accumulated contributions standing to the member's credit must be paid to the member upon the member's written application to the board.

History: En. Sec. 17, Ch. 37, L. 1945; amd. Sec. 2, Ch. 109, L. 1947; amd. Sec. 10, Ch. 243, L. 1955; R.C.M. 1947, 31-217; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 3, Ch. 278, L. 1985; amd. Sec. 2, Ch. 50, L. 1991; amd. Sec. 116, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted "retirement benefit" for "retirement allowance" and substituted "accumulated contributions" for "accumulated deductions"; and made minor changes in style. Amendment effective July 1, 1993.

19-6-404. State's contribution. The state of Montana shall annually contribute to the pension trust fund an amount equal to 36.28% of the total compensation paid to the members from the following sources:

(1) an amount equal to 26.10% of the total compensation of the members is payable from the same source that is used to pay compensation to the members; and

(2) an amount equal to 10.18% of the total compensation of the members is payable from a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963; amd. Sec. 3, Ch. 361, L. 1974; amd. Sec. 1, Ch. 350, L. 1975; R.C.M. 1947, 31-210; amd. Sec. 1, Ch. 226, L. 1979; amd. Sec. 12, Ch. 549, L. 1981; amd. Sec. 6, Ch. 277, L. 1985; amd. Sec. 4, Ch. 278, L. 1985; amd. Sec. 3, Ch. 294, L. 1985; amd. Sec. 3, Ch. 62, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 816, L. 1991; amd. Sec. 117, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in introduction substituted "pension trust fund" for "account" and substituted "total compensation paid to the members" for "salaries paid to the highway patrol officers who are covered by this account"; and in (1) and (2) substituted "the total compensation of the members" for "salaries". Amendment effective July 1, 1993.

19-6-405 through 19-6-409. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-6-405. En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963; amd. Sec. 6, Ch. 326, L. 1974; R.C.M. 1947, 31-205(part); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 2, Ch. 221, L. 1991.

19-6-406. En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(2).

19-6-407. En. Sec. 31-230 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 14, Ch. 326, L. 1974; R.C.M. 1947, 31-230.

19-6-408. En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(3).

19-6-409. En. Sec. 3, Ch. 138, L. 1991.

Part 5
Service Retirement Benefits

19-6-501. Eligibility and application for service retirement benefit — commencement of benefit. (1) (a) A member first employed by the Montana highway patrol on or before July 1, 1985, is eligible to receive a service retirement benefit after completing 20 years or more of membership service and terminating service.

(b) A member first employed by the Montana highway patrol after July 1, 1985, is eligible to receive a service retirement benefit when the member has reached age 50, completed 20 years or more of membership service, and terminated service.

(2) A member eligible to receive a retirement benefit, as provided in subsection (1), shall apply in writing to the division.

(3) (a) Except as provided in subsection (3)(b), the retirement benefit may commence on the first day of the month following the member's last day of covered service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible member who has terminated service must commence no later than the first day of the month following the member's 60th birthday.

History: En. Sec 11, Ch. 37, L. 1945; amd. Sec. 9, Ch. 326, L. 1974; R.C.M. 1947, 31-211; amd. Sec. 2, Ch. 206, L. 1981; amd. Sec. 2, Ch. 53, L. 1983; amd. Sec. 5, Ch. 278, L. 1985; amd. Sec. 7, Ch. 196, L. 1989; amd. Sec. 121, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to service retirement benefit or retirement benefit for references to service retirement allowance or retirement allowance; at end of (1)(a) substituted "membership service and terminating service" for "creditable service and terminating covered employment"; at end of (1)(b) substituted "membership service, and terminated service" for "creditable service, and terminated covered employment"; in (2), at end, substituted "division" for "department"; in (3)(a) substituted "covered service" for "covered employment" and substituted "inactive member" for "terminated member"; in (3)(b) substituted "member who has terminated service" for "terminated member"; and made minor changes in style. Amendment effective July 1, 1993.

19-6-502. Service retirement benefit. Upon retirement from service, a member must receive a service retirement benefit equal to 2.5% of the member's final average salary for each year of service credit.

History: En. Sec. 13, Ch. 37, L. 1945; amd. Sec. 4, Ch. 361, L. 1974; amd. Sec. 5, Ch. 65, L. 1977; R.C.M. 1947, 31-213; amd. Sec. 6, Ch. 278, L. 1985; amd. Sec. 4, Ch. 816, L. 1991; amd. Sec. 122, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present text regarding service retirement benefit for former section that read: "(1) Upon retirement from service, a member shall receive a service retirement allowance consisting of the state annuity plus the member's annuity.

(2) The amount of the service retirement allowance must equal 2.5% of his final salary for each year of creditable service." Amendment effective July 1, 1993.

19-6-503. Early retirement benefit for member discontinued from service other than for cause. If a member is discontinued from service other than for cause after having completed 5 years of membership service but before reaching retirement age, the member must, upon filing a written application with the division, be paid an early retirement benefit that is of actuarial equivalent value to a service retirement based on a retirement age of 60.

History: En. Sec. 15, Ch. 37, L. 1945; amd. Sec. 8, Ch. 243, L. 1955; amd. Sec. 6, Ch. 65, L. 1977; R.C.M. 1947, 31-215; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 3, Ch. 206, L. 1981; amd. Sec. 8, Ch. 278, L. 1985; amd. Sec. 123, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted "5 years of membership service" for "5 years of total service", substituted "division" for "department", and after "be paid" substituted remainder of section regarding early retirement benefit for former text that read: "whichever of the following allowances that he elects:

(1) the full amount of his accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity based on a retirement age of 60"; and made minor changes in style. Amendment effective July 1, 1993.

19-6-504. Repealed. Sec. 13, Ch. 86, L. 1985.

History: En. Sec. 16, Ch. 37, L. 1945; amd. Sec. 9, Ch. 243, L. 1955; R.C.M. 1947, 31-216.

19-6-505. Payment of retirement benefits. (1) The service retirement benefit must be paid to the retired member for the remainder of the member's life.

(2) Upon the retired member's death, the retirement benefit must be paid to the member's surviving spouse, if there is one.

(3) (a) If upon the retired member's death there is no surviving spouse or if the spouse dies, the retirement benefit must be paid as provided in subsection (3)(c) to the retired member's child, if there is one, for as long as the child remains a dependent child.

(b) If there is more than one dependent child, the retirement benefit must be paid as provided in subsection (3)(c) to the children collectively. When a child is no longer a dependent child, the pro rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent.

(c) Payments to a dependent child must be made to the child's appointed guardian for the child's use.

(4) If upon the retired member's death there is no surviving spouse or dependent child and if the member had designated a beneficiary as provided in 19-2-801, the designated beneficiary must be paid an amount equal to the retired member's accumulated contributions less any retirement benefits paid to the member before the member's death.

(5) If the retired member did not designate a beneficiary or if the beneficiary predeceased the retired patrol officer, the amount provided in subsection (4) must be paid to the member's estate.

History: En. Sec. 7, Ch. 278, L. 1985; amd. Sec. 1, Ch. 63, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 124, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to retired member or member for references to retired patrol officer or patrol officer; in (1), at beginning, substituted "The service retirement benefit must be paid" for "The department shall pay the service retirement allowance provided for in 19-6-502"; in (2) and (3)(a) substituted "the retirement benefit must be paid" for "the department shall pay the retirement allowance"; at end of (3)(a) substituted "remains a dependent child" for "remains dependent as defined in 19-6-101"; in (3)(b), in first sentence, substituted "retirement benefit" for "retirement allowance" and in second sentence substituted "when a child is no longer a dependent child" for "when a child no longer qualifies as dependent as defined in 19-6-101"; in (4) substituted reference to 19-2-801 for reference to 19-6-602, substituted "designated beneficiary must be paid" for "department shall pay to the designated beneficiary", and substituted "accumulated contributions" for "accumulated deductions"; and made minor changes in style. Amendment effective July 1, 1993.

19-6-506. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 627, L. 1989; amd. Sec. 18, Ch. 16, L. 1991; amd. Secs. 1, 3, Ch. 735, L. 1991.

Part 6

Disability Retirement Benefits

19-6-601. Disability retirement benefit. (1) In case of the disability of a member, a disability retirement benefit must be granted the member that is the actuarial equivalent of the service retirement benefit under 19-6-502 standing to the member's credit at the time of the member's disability retirement. If the disability is a direct result of any service to the Montana highway patrol in the line of duty, then the member who is disabled must be retired on a disability retirement benefit of one-half the member's final average salary regardless of the member's length of service.

(2) Upon the death of a retired member receiving a disability retirement benefit as provided in subsection (1), the benefit must be paid to the member's surviving spouse or dependent child, if there is a spouse or child, in the same manner as provided for in 19-6-505(2) and (3).

History: En. Sec. 14, Ch. 37, L. 1945; amd. Sec. 1, Ch. 109, L. 1947; R.C.M. 1947, 31-214; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 9, Ch. 278, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 125, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in two places substituted reference to member for reference to patrol officer; in three places substituted reference to disability retirement benefit or benefit for reference to disability retirement allowance or allowance; in (1), near beginning of first sentence before "disability", deleted "total", after first "member" deleted "permanent in character, regardless of the length of service of the member", before "the actuarial equivalent" substituted "that is" for "in an amount calculated on", and substituted "service retirement benefit under 19-6-502" for "member's annuity and the state annuity" and in second sentence substituted "who is disabled must be retired on a disability retirement benefit" for "who is totally and permanently disabled shall be retired on total retirement allowance" and near end substituted "final average salary" for "final salary"; and made minor changes in style. Amendment effective July 1, 1993.

19-6-602. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 22, Ch. 37, L. 1945; amd. Sec. 1, Ch. 107, L. 1967; amd. Sec. 10, Ch. 326, L. 1974; amd. Sec. 7, Ch. 65, L. 1977; R.C.M. 1947, 31-222; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 10, Ch. 278, L. 1985; amd. Sec. 8, Ch. 196, L. 1989.

19-6-603. Renumbered 19-6-901 by Code Commissioner, 1993.

19-6-604. Renumbered 19-6-902 by Code Commissioner, 1993.

19-6-605 through 19-6-610 reserved.

19-6-611. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 597, L. 1981.

19-6-612. Medical examination of disability retiree — cancellation of benefit. (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the duties of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3). If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) A recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in the same classification within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department of justice shall pay the cost of the review.

History: En. Sec. 4, Ch. 597, L. 1981; amd. Sec. 2, Ch. 138, L. 1989; amd. Sec. 126, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to disability retirement benefit for references to disability retirement allowance or retirement allowance; in (1), near beginning of first sentence after "board", deleted "in its discretion", in third sentence, after "determine", deleted "by reason of physical or mental capacity", and in fifth sentence, at end after "canceled", deleted "when he is notified of the determination of the board"; in (2), at end of first sentence, substituted "monthly benefit" for "monthly allowance"; in (4), in second sentence after "department", inserted "of justice"; and made minor changes in style. Amendment effective July 1, 1993.

Part 7

Minimum Benefits and Benefit Increases

19-6-701. Repealed. Sec. 14, Ch. 278, L. 1985.

History: En. 31-228 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 13, Ch. 326, L. 1974; amd. Sec. 9, Ch. 65, L. 1977; R.C.M. 1947, 31-228.

19-6-702 through 19-6-706. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-6-702. En. Sec. 20, Ch. 37, L. 1945; amd. Sec. 3, Ch. 332, L. 1977; R.C.M. 1947, 31-220(part).

19-6-703. En. Sec. 25, Ch. 37, L. 1945; R.C.M. 1947, 31-225; amd. Sec. 7, Ch. 114, L. 1979.

19-6-704. En. Sec. 24, Ch. 37, L. 1945; amd. Sec. 12, Ch. 326, L. 1974; R.C.M. 1947, 31-224(1)(b); amd. Sec. 7, Ch. 114, L. 1979.

19-6-705. En. Sec. 21, Ch. 37, L. 1945; amd. Sec. 3, Ch. 214, L. 1977; R.C.M. 1947, 31-221; amd. Sec. 11, Ch. 464, L. 1985; amd. Sec. 9, Ch. 823, L. 1991.

19-6-706. En. 31-221.1 by Sec. 4, Ch. 214, L. 1977; R.C.M. 1947, 31-221.1.

19-6-707. Minimum monthly benefit. (1) Subject to the limitations contained in subsection (2), the following retired members and their survivors are eligible to receive a monthly benefit of not less than 2% multiplied by the member's service credits multiplied by the current base compensation received by a probationary highway patrol officer:

(a) a retired member who is 55 years of age or older, except as provided in subsection (3), or the member's survivor, who is receiving a service retirement benefit;

(b) a retired member, or the member's survivor, who is receiving a disability retirement benefit; and

(c) a recipient of a survivorship benefit.

(2) (a) The maximum monthly benefit paid under subsection (1) may not exceed 60% of the current base compensation of a probationary highway patrol officer.

(b) The annual increase in a monthly benefit under subsection (1) may not exceed 5% of the current monthly benefit paid to a retired member or the member's survivor.

(3) A retired member otherwise qualified under subsection (1)(a) who is employed in a position covered by a retirement system under Title 19 is ineligible to receive the minimum monthly benefit provided for in this section until the member's service in the covered position is terminated.

History: En. Sec. 1, Ch. 294, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 130, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to members for references to highway patrol officers or patrol officers; in four places substituted references to survivors or survivor for references to beneficiaries or beneficiary; in (1), after "monthly benefit", deleted "allowance", substituted "service credits" for "creditable years of service", and substituted "base compensation" for "base salary"; at end of (1)(a) substituted "service retirement benefit" for "service retirement allowance"; in (1)(b) substituted "disability retirement benefit" for "disability retirement allowance"; in (1)(c) substituted "recipient of a survivorship benefit" for "beneficiary receiving a survivorship allowance"; in (2)(a), after "monthly benefit", deleted "allowance" and substituted "base compensation" for "base salary"; in (2)(b), in two places after "monthly benefit", deleted "allowance"; in (3), after "Title 19", deleted "chapters 3 through 13", after "monthly benefit" deleted "allowance", and substituted "service" for "employment"; and made minor changes in style. Amendment effective July 1, 1993.

19-6-708. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 14, L. 1987.

19-6-709. Supplemental benefits for certain retirees. (1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability or survivorship benefit under 19-6-601 or 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's covered service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) (a) Twenty-five cents of each motor vehicle registration fee provided for in 61-3-321 must be deposited in the pension trust fund at the end of each fiscal year. The fee is statutorily appropriated, as provided in 17-7-502, for payment of benefits to eligible recipients. The total funds must be distributed by the division in lump-sum payments to eligible recipients along with their normal retirement benefit payment.

(b) The lump-sum payment must be distributed proportionally to all eligible recipients based on service credit at the time of retirement, subject to the following:

(i) a recipient under subsection (2)(c) is considered to have 20 years of service for the purposes of the distributions;

(ii) any recipient of a service retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(iii) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section after August 31, 1993, is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency.

(c) Any amount deposited in the pension trust fund under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the retirement system.

(5) Every 10 years following July 1, 1991, the division shall review the size of the additional fee collected under 61-3-321(5) and deposited in the account in accordance with subsection (4)(a) and recommend to each legislature following the division's review any legislation necessary to reduce the fee to the minimum amount necessary to provide the supplemental benefits provided by this section.

History: En. Sec. 1, Ch. 567, L. 1991; amd. Sec. 3, Ch. 735, L. 1991; amd. Sec. 131, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to member or retired member for references to patrol officer or officer; in (1), near beginning, substituted "retirement benefit" for "retirement allowance", substituted "survivor" for "beneficiary", and after "lump-sum" inserted "benefit"; in (2)(a) substituted "service retirement benefit" for "service allowance"; in (2)(b) substituted "survivor" for "beneficiary"; in (2)(c), after "survivorship", substituted "benefit" for "allowance"; in (3), in first sentence after "Title 19", deleted "chapters 3 through 13", after "lump-sum" inserted "benefit", and near end substituted "service" for "employment" and in second sentence substituted "covered service" for "covered employment"; in (4)(a), in first sentence, substituted "pension trust fund" for "highway patrol fund" and in third sentence substituted "division" for "department" and at end, after "normal", substituted "retirement benefit payment" for "retirement allowance payment"; in (4)(b), after "based on", substituted "service credit" for "years of service"; in (4)(b)(ii) substituted "service retirement benefit" for "service retirement allowance", substituted "monthly benefit" for "monthly allowance", and substituted "service credit reduced" for "years of service reduced"; in (4)(b)(iii), near beginning, substituted "maximum annual increase in the amount of supplemental benefits paid to each individual" for "maximum amount available for payment of supplemental benefits", after "is" deleted "limited to an amount that will provide a percentage increase in the average supplemental benefit of all eligible members that is equal to", and deleted last sentence that read: "The intent of this subsection is to limit each annual individual supplemental benefit payment to no more than the increase in the consumer price index for the previous calendar year"; in (4)(c), after "deposited in the", deleted "account, meaning the highway patrol officers' retirement" and at end substituted "retirement system" for "account"; in (5), in two places, substituted references to Division for references to Department; and made minor changes in style. Amendment effective July 1, 1993.

Termination — Disposition of Funds: Section 7, Ch. 567, L. 1991, provided: "(1) The provisions of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] terminate upon the death of the last recipient eligible under [section 1(2)] [19-6-709(2)] for the supplemental benefit provided by [section 1] [19-6-709].

(2) Money collected for the purposes of the supplemental payment under [section 1] [19-6-709] that remains in the account, meaning the highway patrol officers' retirement pension trust fund, upon termination of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] must be used to amortize unfunded liabilities of the account."

Part 8
Service Credit

19-6-801. Election to qualify military service. (1) A member with 15 years or more of service credit with the Montana highway patrol may, at any time prior to retirement, make a written election with the division to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-705.

(2) To qualify this service the member shall contribute to the account the amount determined by the division to be due based on the member's compensation and regular contribution rate as of the member's 16th year and as many succeeding years as are required to qualify this service, with interest from the date the member becomes eligible for this benefit to the date the member contributes. The member may not qualify more of this service than the member has service with the Montana highway patrol in excess of 15 years.

History: En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955; amd. Sec. 11, Ch. 326, L. 1974; amd. Sec. 6, Ch. 361, L. 1974; amd. Sec. 8, Ch. 65, L. 1977; R.C.M. 1947, 31-223(2); amd. Sec. 118, Ch. 265, L. 1993; Sec. 19-6-304, MCA 1991; redes. 19-6-801 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), near beginning after "service", inserted "credit", substituted "division" for "department", near end, before "credit", inserted "service", and at end substituted reference to 19-2-705 for reference to 19-6-303; in (2), in first sentence, substituted "determined by the division to be due" for "determined by the department due" and substituted "regular contribution rate" for "normal contribution rate"; and made minor changes in style. Amendment effective July 1, 1993.

19-6-802. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service in the public employees', sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system for which the member has received a refund of the member's membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service credit in the highway patrol officers' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the highway patrol officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the highway patrol officers' retirement system, according to the most recent actuarial valuation.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the highway patrol officers' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This employment may not be credited in more than one retirement system under Title 19.

History: En. Sec. 2, Ch. 145, L. 1981; amd. Sec. 2, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 119, Ch. 265, L. 1993; Sec. 19-6-305, MCA 1991; redes. 19-6-802 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1)(a), near beginning of first sentence before "service", deleted "creditable" and in second sentence substituted "pension trust fund" for "retirement fund", after "service" inserted "credit", and after "based on" deleted "his compensation earned as a member of the former system and the normal contribution rate according to"; in (1)(b), near beginning, substituted "division" for "administrator" and at end, after "valuation", deleted "based on the salaries earned by the employee as a member of the former system"; in (2)(a), in second sentence, substituted "compensation" for "salary" and in third sentence substituted "the board shall grant service credit subject to rules adopted by the board" for "the board may grant service credit subject to the provisions of 19-6-201" and near end, after "based on", deleted "the employee's compensation earned during this period of service and the normal contribution rate according to"; in (2)(c) substituted "employment" for "service"; and made minor changes in style. Amendment effective July 1, 1993.

19-6-803. Election to qualify law enforcement service performed in another state. (1) Except as provided in subsections (4) through (6), a member with 5 years or more of membership service in the retirement system may qualify 1 year of out-of-state law enforcement employment for each year of service credit under the retirement system, up to a maximum of 5 years, provided that the member is not eligible to receive a retirement benefit for that out-of-state law enforcement employment.

(2) To qualify this service, a member shall:

(a) at any time before the member's retirement, make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the retirement system, as determined by the board, based on:

(i) the member's compensation for the 12 months immediately preceding the date of the member's election to cover the service under the retirement system; and

(ii) the total contribution rate in effect at the time of purchase of service.

(3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board.

(4) Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-6-801.

(5) Service qualified under this section may not be used in calculating a member's retirement benefit unless the last 5 years of service credit were earned under the retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the contributions made to qualify the service.

(6) The combined total service qualified under this section and military service qualified under 19-6-801 may not exceed 5 years.

History: En. Sec. 1, Ch. 142, L. 1991; amd. Sec. 120, Ch. 265, L. 1993; Sec. 19-6-306, MCA 1991; redes. 19-6-803 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in five places, before "retirement system", deleted "highway patrol officers'"; in (1) substituted "5 years or more of membership service" for "5 years or more of creditable service" and substituted "service credit" for "creditable service"; in (2)(b) substituted "pension trust fund" for "retirement fund"; in (5), in two places, substituted "retirement benefit" for "retirement allowance" and substituted "service credit" for "creditable service"; and made minor changes in style. Amendment effective July 1, 1993.

Part 9

Survivorship Benefits and Death Payments

19-6-901. Survivorship benefits — employment-related death. (1) If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service, a survivorship benefit must be paid to the member's surviving spouse or dependent child in the same manner as provided for in 19-6-505(2) through (4).

(2) The retirement benefit must equal 50% of the final average salary of the member.

History: En. Sec. 18, Ch. 37, L. 1945; amd. Sec. 11, Ch. 243, L. 1955; R.C.M. 1947, 31-218; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 11, Ch. 278, L. 1985; amd. Sec. 127, Ch. 265, L. 1993; Sec. 19-6-603, MCA 1991; redes. 19-6-901 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) substituted "service, a survivorship benefit" for "employment, a retirement allowance" and after "dependent child" deleted "or designated beneficiary"; substituted (2) regarding amount of survivorship benefit for former subsection that read: "(2) Such retirement allowance shall consist of:

(a) a member's annuity, which shall be the actuarial equivalent of the member's accumulated deductions standing to his credit; and

(b) the actuarial equivalent of a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the member, less the amount which is paid to a surviving spouse, dependent child, or designated beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable"; and made minor changes in style. Amendment effective July 1, 1993.

19-6-902. Survivorship benefits — death from other causes. If a member dies before reaching retirement age, the member's surviving spouse or dependent child must be paid a survivorship benefit that is the actuarial equivalent of the early retirement benefit provided in 19-6-503, in the same manner as provided for in 19-6-505.

History: En. Sec. 19, Ch. 37, L. 1945; amd. Sec. 12, Ch. 243, L. 1955; R.C.M. 1947, 31-219; amd. Sec. 12, Ch. 278, L. 1985; amd. Sec. 128, Ch. 265, L. 1993; Sec. 19-6-604, MCA 1991; redes. 19-6-902 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present text regarding survivorship benefits for former section that read: "If a member dies before reaching retirement age, the department shall pay to his surviving spouse, dependent child, or designated beneficiary in the same manner as provided for in subsections (2) through (4) of 19-6-505 the actuarial equivalent of the options as provided in 19-6-503." Amendment effective July 1, 1993.

19-6-903. Death payments in absence of survivors. If upon the member's death before retirement there is no surviving spouse or dependent child and if the member had designated a beneficiary as provided in 19-2-801, the designated beneficiary must be paid an amount equal to the member's accumulated contributions. If there is no designated beneficiary, death payments must be paid to the member's estate.

History: En. Sec. 129, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

CHAPTER 7

SHERIFFS' RETIREMENT

Part 1 — General Provisions

19-7-101. Definitions.
19-7-102. Sheriffs' retirement system established.
19-7-103. Renumbered 19-2-905.
19-7-104. Repealed.
19-7-105. Short title.

Part 2 — Administration
(Repealed)

19-7-201. Repealed.
19-7-202. Repealed.
19-7-203. Terminated.

Part 3 — Eligibility, Membership, and Vesting

19-7-301. Membership — inactive vested members — inactive nonvested members.
19-7-302. Ineligibility for membership in public employees' retirement system.
19-7-303. Repealed.
19-7-304. Repealed.
19-7-305. Repealed.
19-7-306. Repealed.
19-7-307. Repealed.
19-7-308 through 19-7-311. Renumbered by Code Commissioner, 1993.
19-7-312. Transfer of membership — qualification of previous service.

Part 4 — Contributions and Refunds

19-7-401. Repealed.
19-7-402. Sources of money in fund.
19-7-403. Members' contributions deducted.
19-7-404. Employer contributions.
19-7-405 through 19-7-409. Repealed.

Part 5 — Service Retirement Benefits

19-7-501. Eligibility and application for service retirement — commencement of benefit.
19-7-502. Early retirement option.
19-7-503. Service retirement benefit.
19-7-504. Involuntary retirement benefit.

Part 6 — Disability Retirement Benefits

19-7-601. Disability retirement benefit.
19-7-602. Repealed.
19-7-603. Repealed.
19-7-604. Renumbered 19-7-901 by Code Commissioner, 1993.
19-7-605 through 19-7-610 reserved.
19-7-611. Repealed.
19-7-612. Medical examination of disability retiree — cancellation of benefit.

Part 7 — Minimum Benefits and Benefit Increases

19-7-701. Renumbered 19-7-1001 by Code Commissioner, 1993.
19-7-702 through 19-7-707. Repealed.
19-7-708. Eligibility for postretirement adjustment.
19-7-709. Funding for postretirement adjustment — reserve fund.
19-7-710. Payment and amount of postretirement adjustment.

Part 8 — Service Credit

19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems.
19-7-802. Qualification of other Montana public service.
19-7-803. Election to qualify previous military service.
19-7-804. Election to purchase additional service.

Part 9 — Survivorship Benefits and Death Payments

19-7-901. Payments in case of death before retirement.

Part 10 — Optional Forms of Retirement Benefits

19-7-1001. Optional forms of benefits.

Part 11 — Reemployment of Retired Members

19-7-1101. Reemployment of a retired member.

Part 1

General Provisions

19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any deductions are made and exclusive of maintenance, allowances, and expenses.

(2) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(3) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

(4) "Sheriff" means any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff.

History: Ap. p. Sec. 2, Ch. 178, L. 1974; amd. Sec. 1, Ch. 59, L. 1977; amd. Sec. 17, Ch. 332, L. 1977; Sec. 68-2602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; Sec. 68-2603, R.C.M. 1947; R.C.M. 1947, 68-2602, 68-2603; amd. Sec. 8, Ch. 114, L. 1979; amd. Sec. 9, Ch. 282, L. 1983; amd. Sec. 1, Ch. 401, L. 1985; amd. Sec. 5, Ch. 45, L. 1987; amd. Sec. 62, Ch. 370, L. 1987; amd. Sec. 9, Ch. 196, L. 1989; amd. Sec. 2, Ch. 261, L. 1993; amd. Sec. 134, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 261 inserted definition of investigator; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 265 inserted definition of compensation; deleted definition of account that read: ""Account" means the Montana sheriffs' retirement pension trust fund administered by the board"; deleted definition of accumulated contributions or accumulated deductions that read: ""Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest"; deleted definition of actuarial equivalent that read: ""Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; deleted definition of beneficiary that read: ""Beneficiary" means a person who is nominated by the member in a witnessed document filed with the board"; deleted definition of Board that read: ""Board" means the public employees' retirement board"; deleted definition of creditable service that read: ""Creditable service" means the aggregate of all of a member's current and prior service"; deleted definition of death benefit that read: ""Death benefit" means a monthly annuity or lump-sum payment made to a beneficiary on behalf of a member who dies before retirement"; substituted definition of final average salary for definition of final salary and at beginning of first sentence substituted "means the average monthly compensation received by a member" for "means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses" and at end substituted "total compensation earned divided by the number of months served" for "total salary earned divided by the number of years served" and in second sentence substituted "retirement benefit" for "retirement allowance" and substituted "final average salary" for "final salary"; deleted definition of member that read: ""Member" means any person who has accumulated deductions in the account to his credit"; deleted definition of member's annuity that read: ""Member's annuity" means payments for life derived from contributions made by the member while employed"; deleted definition of membership service that read: ""Membership service" means service for which an amount is deducted from the salary of a member and paid into the account"; deleted definition of prior service that read: ""Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana"; deleted definition of retired Sheriff that read: ""Retired sheriff" means a person receiving a retirement allowance under this chapter"; deleted definition of retirement allowance that read: ""Retirement allowance" means the state annuity plus the member's annuity"; deleted definition of service that read: ""Service" means employment as a sheriff"; deleted definition of state annuity that read: ""State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account"; deleted definition of vested retirement that read: ""Vested retirement" means a retirement not for cause and before retirement age"; and made minor changes in style. Amendment effective July 1, 1993.

19-7-102. Sheriffs' retirement system established. A retirement system is established for Montana members, which is known as the sheriffs' retirement system. It is an actuarial reserve system for the payment of death, disability, and retirement benefits to members and to the beneficiaries of the members to provide for themselves and their dependents in the case of disability or death and upon retirement from active duty. The system is governed by the provisions of chapter 2 and this chapter.

History: En. 68-2601 by Sec. 1, Ch. 178, L. 1974; R.C.M. 1947, 68-2601; amd. Sec. 6, Ch. 261, L. 1993; amd. Sec. 133, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 inserted last sentence regarding governing chapters; and made minor changes in style. Amendment effective July 1, 1993.

1993 Name Change: Section 6(2), Ch. 261, L. 1993, provided: "In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise." The term was subsequently changed by the Code Commissioner in this section. Amendment effective July 1, 1993.

19-7-103. Renumbered 19-2-905. Sec. 238, Ch. 265, L. 1993.

19-7-104. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2623 by Sec. 23, Ch. 178, L. 1974; R.C.M. 1947, 68-2623(1), (3).

19-7-105. Short title. This chapter may be cited as "The Sheriffs' Retirement Act".

History: En. Sec. 132, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 2
Administration
(Repealed)

19-7-201. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(1).

19-7-202. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2609 by Sec. 9, Ch. 178, L. 1974; R.C.M. 1947, 68-2609(part); amd. Sec. 3, Ch. 235, L. 1981; amd. Sec. 15, Ch. 79, L. 1983; amd. Sec. 10, Ch. 282, L. 1983.

19-7-203. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

Part 3
Eligibility, Membership, and Vesting

19-7-301. Membership — inactive vested members — inactive nonvested members. (1) Every sheriff is required to become a member of the sheriffs' retirement system unless the sheriff was a member of the public employees' retirement system on July 1, 1974, in which case the sheriff may at the sheriff's option become a member of the sheriffs' retirement system.

(2) An investigator is required to become a member of the sheriffs' retirement system unless the investigator was a member of the public employees' retirement system on July 1, 1993, in which case the investigator has the option of becoming a member of the sheriffs' retirement system.

(3) All sheriffs and investigators who become members of the sheriffs' retirement system must remain members so long as they are actively employed in an eligible capacity, except as provided in 19-7-1101.

(4) A member with at least 15 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(5) A member with less than 15 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. 68-2607 by Sec. 7, Ch. 178, L. 1974; amd. Sec. 3, Ch. 59, L. 1977; R.C.M. 1947, 68-2607(part); amd. Sec. 1, Ch. 81, L. 1987; amd. Sec. 3, Ch. 261, L. 1993; amd. Sec. 135, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 261 inserted (2) requiring that certain investigators be retirement system members; at beginning of (3), after "sheriffs", inserted "and investigators" and at end substituted "subsection (4)" for "subsection (2)"; in first sentence of (4), after "employed", substituted "in a position covered by the retirement system" for "as a sheriff"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 265 in (3), at end, substituted reference to 19-7-1101 for reference to subsection (2); substituted (4) regarding inactive vested member for former subsection that read: "A retired sheriff who is employed as a sheriff after retirement for less than 60 working days in a calendar year is excluded from membership. The retirement allowance of a retired sheriff so employed must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year"; inserted (5) regarding inactive nonvested member; and made minor changes in style. Amendment effective July 1, 1993.

The codifier codified the reference to 19-7-1101 at the end of (3) instead of the reference to subsection (4) because Ch. 265 deleted former (4).

19-7-302. Ineligibility for membership in public employees' retirement system. (1) After July 1, 1974, a sheriff may not become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs.

(2) After July 1, 1993, an investigator is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to investigators, except as provided in 19-7-301.

(3) This chapter may not be construed to deny any sheriff or investigator any benefits accrued under provisions of the public employees' retirement system prior to membership in this retirement system.

History: En. 68-2628 by Sec. 28, Ch. 178, L. 1974; amd. Sec. 12, Ch. 59, L. 1977; R.C.M. 1947, 68-2628; amd. Sec. 4, Ch. 261, L. 1993; amd. Sec. 136, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 261 inserted (2) restricting investigator membership in the Public Employees' Retirement System; in (3), after "sheriff", inserted "or investigator" and at end substituted "membership in this retirement system" for "July 1, 1974"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 265 at end of (1), after "sheriffs", deleted "except as provided in 19-7-301"; and made minor changes in style. Amendment effective July 1, 1993.

Style changes in (1) and (3) were slightly different in the two chapters. In each case, the codifier chose the more appropriate of the two.

19-7-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2622 by Sec. 22, Ch. 178, L. 1974; amd. Sec. 9, Ch. 59, L. 1977; R.C.M. 1947, 68-2622.

19-7-304. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2615 by Sec. 15, Ch. 178, L. 1974; R.C.M. 1947, 68-2615(1); amd. Sec. 3, Ch. 50, L. 1991.

19-7-305. Repealed. Sec. 7, Ch. 50, L. 1991.

History: En. 68-2615 by Sec. 15, Ch. 178, L. 1974; R.C.M. 1947, 68-2615(2).

19-7-306. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2616 by Sec. 16, Ch. 178, L. 1974; amd. Sec. 6, Ch. 59, L. 1977; R.C.M. 1947, 68-2616; amd. Sec. 3, Ch. 103, L. 1987.

19-7-307. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2619 by Sec. 19, Ch. 178, L. 1974; amd. Sec. 19, Ch. 332, L. 1977; R.C.M. 1947, 68-2619(part).

19-7-308 through 19-7-311. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

19-7-308. Renumbered 19-7-801.
19-7-309. Renumbered 19-7-802.
19-7-310. Renumbered 19-7-803.
19-7-311. Renumbered 19-7-804.

19-7-312. Transfer of membership — qualification of previous service. A person who elects to become a member of the sheriffs' retirement system pursuant to 19-7-301 may transfer the member's creditable service in the public employees' retirement system into the sheriffs' retirement system under the provisions of 19-7-802.

History: En. Sec. 1, Ch. 261, L. 1993.

Compiler's Comments

Effective Date: Section 7, Ch. 261, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 4

Contributions and Refunds

19-7-401. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2605 by Sec. 5, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2605(part).

19-7-402. Sources of money in fund. The following money must be paid to the division, which shall credit the payments to the pension trust fund:

(1) all contributions by the various counties as required by this chapter;

(2) all contributions by members as required by this chapter;

(3) all interest on and increase of the investments and money under this chapter; and

(4) any supplemental appropriation or revenue from a source or sources approved by the legislature or money received directly from the federal government for funding of law enforcement retirement systems.

History: En. 68-2606 by Sec. 6, Ch. 178, L. 1974; R.C.M. 1947, 68-2606; amd. Sec. 137, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in introduction substituted "division" for "board", substituted "pension trust fund" for "sheriffs' retirement system account", and after "fund" deleted former (1) and (2) that read: "(1) all accumulated deductions paid into the public employees' retirement system by any sheriff during any period of prior service, as defined in this chapter; plus

(2) all contributions paid into the public employees' retirement system coincident with such accumulated deductions by the state of Montana or any county or city"; in (2) substituted "contributions by members as required by this chapter" for "contributions by sheriffs as defined in this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

19-7-403. Members' contributions deducted. (1) Every member shall contribute into the pension trust fund 7% of the member's monthly compensation, which must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and salary

as used to define the member's final average salary in 19-7-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. 68-2608 by Sec. 8, Ch. 178, L. 1974; R.C.M. 1947, 68-2608(part); amd. Sec. 12, Ch. 464, L. 1985; amd. Sec. 138, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in two places, substituted "pension trust fund" for "account" and substituted "monthly compensation" for "monthly salary"; in (4), near end of first sentence, substituted "final average salary" for "final salary"; and made minor changes in style. Amendment effective July 1, 1993.

19-7-404. Employer contributions. (1) The employer shall pay monthly 7.67% of each member's gross compensation into the pension trust fund created by this chapter.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may budget, levy, and collect annually a special tax on the assessable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation. This tax may be in addition to the annual rate of taxation allowed by law to be levied by the county.

History: En. 68-2609 by Sec. 9, Ch. 178, L. 1974; R.C.M. 1947, 68-2609(part); amd. Sec. 15, Ch. 549, L. 1981; amd. Sec. 2, Ch. 393, L. 1985; amd. Sec. 5, Ch. 261, L. 1993; amd. Sec. 139, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 261 at beginning of (1) substituted "employer" for "various counties of Montana"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 265 in (1) substituted "gross compensation" for "gross salary" and substituted "pension trust fund" for "retirement account". Amendment effective July 1, 1993.

19-7-405 through 19-7-409. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-7-405. En. 68-2605 by Sec. 5, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2605(part); amd. Sec. 63, Ch. 370, L. 1987; amd. Sec. 3, Ch. 221, L. 1991.

19-7-406. En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(2).

19-7-407. En. 68-2627 by Sec. 27, Ch. 178, L. 1974; amd. Sec. 11, Ch. 59, L. 1977; R.C.M. 1947, 68-2627.

19-7-408. En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(3).

19-7-409. En. Sec. 3, Ch. 138, L. 1991.

Part 5

Service Retirement Benefits

19-7-501. Eligibility and application for service retirement — commencement of benefit. (1) (a) A member initially elected or appointed before July 1, 1989, who has completed at least 24 years of membership service may retire on a service retirement benefit.

(b) A member initially elected or appointed on or after July 1, 1989, who has completed at least 24 years of membership service, reached the age of 50 years, and terminated service may retire on a service retirement benefit.

(2) A member electing to retire shall apply in writing to the board.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), the retirement benefit may commence on the first day of the month following the member's last day of service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 65th birthday.

(c) If an elected official's term of office expires before the 15th day of the month, the official may elect to retire on the first day of the last month of the term of office. An official electing this option may not earn service or compensation for purposes of final average salary under the retirement system in that month, and compensation earned in that month is not subject to employer or member contributions.

History: En. 68-2610 by Sec. 10, Ch. 178, L. 1974; amd. Sec. 4, Ch. 59, L. 1977; R.C.M. 1947, 68-2610; amd. Sec. 3, Ch. 53, L. 1983; amd. Sec. 2, Ch. 86, L. 1985; amd. Sec. 1, Ch. 122, L. 1989; amd. Sec. 10, Ch. 196, L. 1989; amd. Sec. 144, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1)(a), before first "service", inserted "membership" and at end substituted "service retirement benefit" for "service retirement allowance"; in (1)(b), before first "service", inserted "membership", substituted "terminated service" for "terminated covered employment", and at end substituted "service retirement benefit" for "service retirement allowance"; in (3)(a) substituted "retirement benefit" for "retirement allowance", before "service" deleted "membership", and substituted "inactive member" for "terminated member"; in (3)(b) substituted "retirement benefit" for "retirement allowance" and substituted "inactive member" for "terminated member"; in (3)(c), in second sentence, substituted "compensation for purposes of final average salary under the retirement system" for "salary credits" and at end substituted "member contributions" for "employee contributions"; and made minor changes in style. Amendment effective July 1, 1993.

19-7-502. Early retirement option. A member with 15 years of membership service who has reached age 50 may retire with an early retirement benefit. The early retirement benefit must be calculated to be the actuarial equivalent of the member's retirement benefit as otherwise accrued, based upon payment commencing when the member would have completed 24 years of membership service or reached age 60, whichever event would have occurred first.

History: En. 68-2611 by Sec. 11, Ch. 178, L. 1974; R.C.M. 1947, 68-2611; amd. Sec. 9, Ch. 114, L. 1979; amd. Sec. 1, Ch. 105, L. 1981; amd. Sec. 2, Ch. 122, L. 1989; amd. Sec. 145, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present text regarding early retirement option for former section that read: "If a member has served 15 years of creditable service as a sheriff and has reached the age of 50 years, he is granted the option and privilege of retiring, and in such case his retirement allowance shall be the actuarial equivalent of his retirement allowance as otherwise accrued, based upon payment commencing when he would have completed 24 years of creditable service or reached age 60, whichever is less." Amendment effective July 1, 1993.

19-7-503. Service retirement benefit. (1) The amount of any service retirement benefit granted to a member with 24 years or less of membership service is 2.0834% of the member's final average salary for each year of service credit, up to a maximum of 50% of final average salary.

(2) The member's retirement benefit must be increased for any member who contributes after 24 years of service credit by 1.35% of the member's final

average salary for each year of service credit in excess of 24 years, up to a maximum of 60% of the member's final average salary.

(3) If a member dies after retirement and had not elected an optional retirement benefit provided for in 19-7-1001, the member's designated beneficiary must be paid the excess, if any, of the member's accumulated contributions at the time of retirement less payments made to the retired member.

History: En. 68-2608, 68-2612 by Secs. 8, 12, Ch. 178, L. 1974; R.C.M. 1947, 68-2608(part), 68-2612; amd. Sec. 10, Ch. 114, L. 1979; amd. Sec. 3, Ch. 401, L. 1985; amd. Sec. 1, Ch. 78, L. 1991; amd. Sec. 146, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in two places, substituted "final average salary" for "final salary", near beginning substituted "service retirement benefit" for "service retirement allowance", near middle substituted "membership service" for "creditable service", and near end substituted "year of service credit" for "year of creditable service"; in (2), in two places, substituted "final average salary" for "final salary", near beginning substituted "retirement benefit" for "retirement allowance", after first "service" inserted "credit", and substituted "each year of service credit in excess of 24 years" for "each year of creditable service in excess of 24 years of service"; in (3) substituted "optional retirement benefit" for "optional retirement allowance" and before "beneficiary" inserted "designated"; and made minor changes in style. Amendment effective July 1, 1993.

19-7-504. Involuntary retirement benefit. If a member is involuntarily discontinued from service after having completed 5 years of membership service but before reaching retirement age, the member must, upon filing an application, be paid in one of the following ways:

(1) the full amount of the member's accumulated contributions; or

(2) a retirement benefit beginning on the member's 50th birthday, calculated under the provisions of 19-7-502.

History: En. 68-2614 by Sec. 14, Ch. 178, L. 1974; amd. Sec. 5, Ch. 59, L. 1977; R.C.M. 1947, 68-2614; amd. Sec. 2, Ch. 105, L. 1981; amd. Sec. 1, Ch. 116, L. 1991; amd. Sec. 147, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in introductory clause substituted "membership service" for "total service"; in (1) substituted "accumulated contributions" for "accumulated deductions"; in (2) substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

Part 6

Disability Retirement Benefits

19-7-601. Disability retirement benefit. In the case of the disability of a member, regardless of the member's length of service, a disability retirement benefit must be awarded to the member based on the actuarial equivalent of the member's service retirement benefit under 19-7-503 standing to the member's credit at the time of the member's disability retirement. If the disability is a direct result of the member's service as a member in the line of duty, then the member must be awarded a benefit of one-half of the member's final average salary.

History: En. 68-2613 by Sec. 13, Ch. 178, L. 1974; R.C.M. 1947, 68-2613; amd. Sec. 148, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence, near beginning before "disability", deleted "permanent total", substituted "disability retirement benefit" for "disability retirement allowance", and substituted "member's service retirement benefit under 19-7-503" for "member's annuity and the state annuity"; at beginning of second sentence, before "disability", deleted "total permanent", substituted "benefit" for "allowance", and at end substituted "final average salary" for "final salary"; deleted (2) that read: "(2) "Total disability" means a disability of permanent duration or of extended or uncertain duration. The determination shall be made by the board on the basis of competent medical advice"; and made minor changes in style. Amendment effective July 1, 1993.

1993 Name Change: Section 6(2), Ch. 261, L. 1993, provided: "In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise." The term was subsequently changed by the Code Commissioner in this section. Amendment effective July 1, 1993.

19-7-602. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2621 by Sec. 21, Ch. 178, L. 1974; amd. Sec. 8, Ch. 59, L. 1977; R.C.M. 1947, 68-2621; amd. Sec. 11, Ch. 196, L. 1989.

19-7-603. Repealed. Sec. 4, Ch. 401, L. 1985.

History: En. 68-2617 by Sec. 17, Ch. 178, L. 1974; R.C.M. 1947, 68-2617.

19-7-604. Renumbered 19-7-901 by Code Commissioner, 1993.

19-7-605 through 19-7-610 reserved.

19-7-611. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 5, Ch. 597, L. 1981.

19-7-612. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2). If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) A person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in the same classification within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty which the person may have or claim to have.

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's department. If the board's findings are upheld, the public body shall pay the cost of the review.

History: En. Sec. 6, Ch. 597, L. 1981; amd. Sec. 149, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to disability retirement benefit for references to disability retirement allowance or retirement allowance; and made minor changes in style. Amendment effective July 1, 1993.

Part 7

Minimum Benefits and Benefit Increases

19-7-701. Renumbered 19-7-1001 by Code Commissioner, 1993.

19-7-702 through 19-7-707. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-7-702. En. 68-2619 by Sec. 19, Ch. 178, L. 1974; amd. Sec. 19, Ch. 332, L. 1977; R.C.M. 1947, 68-2619(part).

19-7-703. En. 68-2624 by Sec. 24, Ch. 178, L. 1974; R.C.M. 1947, 68-2624.

19-7-704. En. 68-2623 by Sec. 23, Ch. 178, L. 1974; R.C.M. 1947, 68-2623(2).

19-7-705. En. 68-2620 by Sec. 20, Ch. 178, L. 1974; amd. Sec. 8, Ch. 214, L. 1977; R.C.M. 1947, 68-2620; amd. Sec. 13, Ch. 464, L. 1985; amd. Sec. 4, Ch. 50, L. 1991; amd. Sec. 10, Ch. 823, L. 1991.

19-7-706. En. 68-2620.1 by Sec. 9, Ch. 214, L. 1977; R.C.M. 1947, 68-2620.1.

19-7-707. En. Sec. 1, Ch. 14, L. 1987.

19-7-708. Eligibility for postretirement adjustment. (1) Except as provided in subsection (2), a benefit recipient is eligible to receive a postretirement adjustment as provided in 19-7-710 if the recipient is receiving a:

(a) service retirement benefit and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or

(b) disability or survivorship benefit.

(2) A benefit recipient is ineligible to receive a postretirement adjustment under subsection (1) unless the monthly service, disability, or survivorship benefit has been paid for at least 24 consecutive months on or before June 30 in the year the adjustment is made.

History: En. Sec. 1, Ch. 115, L. 1989; amd. Sec. 153, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) substituted "benefit recipient" for "member or beneficiary"; in (1)(a) substituted "service retirement benefit" for "service retirement allowance"; in (1)(b) substituted "survivorship benefit" for "survivorship allowance"; in (2), at beginning, substituted "benefit recipient" for "member or beneficiary" and substituted "survivorship benefit" for "survivorship allowance"; and made minor changes in style. Amendment effective July 1, 1993.

19-7-709. Funding for postretirement adjustment — reserve fund. (1) At the end of each fiscal year, the board shall determine the total investment income earned on the pension trust fund for that fiscal year. From this amount, the board shall subtract the:

(a) actuarial amount required to fund the retirement system for the fiscal year; and

(b) retirement system's administrative and investment expenses for the fiscal year.

(2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of investment income earned on that portion of the pension trust fund balance representing retired members.

(b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

(3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment to eligible members or beneficiaries under 19-7-710.

(4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement adjustment of at least $1 under 19-7-710, an adjustment may not be made in that calendar year.

(5) The amount available for payment of the postretirement adjustment is limited to an amount that would provide a percentage increase in the average service, disability, or survivorship benefit of all eligible benefit recipients, when combined with the postretirement adjustment, that is equal to or less than the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers compiled by the bureau of labor statistics, United States department of labor, or its successor agency.

History: En. Sec. 2, Ch. 115, L. 1989; amd. Sec. 154, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) and (2)(a) substituted "pension trust fund" for "retirement fund"; and in (5), near beginning, substituted "postretirement adjustment" for "postretirement allowance", near middle substituted "survivorship benefit" for "survivorship allowance", and substituted "benefit recipients" for "members". Amendment effective July 1, 1993.

19-7-710. Payment and amount of postretirement adjustment. (1) Effective January 1 of each year that funds are available under 19-7-709, a benefit recipient eligible under 19-7-708 must receive a postretirement adjustment in the form of a monthly benefit payable for life.

(2) The board shall calculate the amount of the postretirement adjustment payable to an eligible benefit recipient by:

(a) dividing the amount available under 19-7-709(3) for payment of the postretirement adjustment by the total accumulated years of service credit for all eligible benefit recipients;

(b) multiplying the quotient obtained in subsection (2)(a) by the individual eligible benefit recipient's service credits;

(c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly annuity from actuarial tables adopted by the board; and

(d) applying the provisions contained in subsections (3) and (4).

(3) If a member had elected to receive an optional retirement benefit, the amount of postretirement adjustment must be adjusted by the appropriate optional factor.

(4) If more than one contingent annuitant is receiving a member's retirement benefit, the postretirement adjustment must be divided in the same manner as the member's retirement benefit.

History: En. Sec. 3, Ch. 115, L. 1989; amd. Sec. 155, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in three places substituted references to benefit recipient for references to member or beneficiary; in three places substituted "postretirement adjustment" for "postretirement allowance"; in (2)(a), after "service", inserted "credit"; in (2)(b) substituted "the individual eligible benefit recipient's service credits" for "the member's total years of service"; in (3) substituted "optional retirement benefit" for "optional retirement allowance"; in (4) substituted "contingent annuitant" for "beneficiary" and in two places substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

Part 8
Service Credit

19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems. (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

(2) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(3) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service credited under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement benefit for an optional retirement benefit elected under 19-7-1001. The final salary or final average salary for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credited, of the combined benefit. The combined benefit may not exceed 60% of the member's final salary or final average salary.

(4) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, shall receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The benefits must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata benefits to that child must cease and be paid to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary.

History: En. Sec. 1, Ch. 122, L. 1979; amd. Sec. 2, Ch. 401, L. 1985; amd. Sec. 140, Ch. 265, L. 1993; Sec. 19-7-308, MCA 1991; redes. 19-7-801 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to member or retired member for references to officer and substituted references to retirement benefit, optional retirement benefit, or service retirement benefit for references to retirement allowance, optional retirement allowance, or service retirement allowance; in (3), in third sentence, substituted "highest compensation" for "highest salary"; in (4) substituted "survivor or contingent annuitant and the continuing benefit" for "beneficiary and the continued benefit"; in (4)(a), near beginning of first sentence, substituted "the surviving spouse must receive a benefit equal" for "the officer's surviving spouse, if there is one, shall, for as long as the spouse remains unmarried, receive from the fund a sum equal" and before "service retirement" deleted "officer's", at beginning of second sentence substituted "If the retired member" for "If the officer leaves one or more dependent children, then upon his death, if he" and after "death" deleted "or remarriage", and in remainder of subsection, in three places, substituted "benefits" for "payments"; in (4)(b), after "benefit", deleted "the officer's beneficiary, designated under 19-7-602, shall receive"; at beginning of (4)(b)(i) substituted "the contingent annuitant must receive a continuing benefit" for "an annuity"; in (4)(b)(ii) substituted "accumulated contributions" for "accumulated deductions" and at end substituted "to the retired member must be paid to the retired member's designated beneficiary" for "to the officer"; and made minor changes in style. Amendment effective July 1, 1993.

1993 Name Change: Section 6(2), Ch. 261, L. 1993, provided: "In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise." The term was subsequently changed by the Code Commissioner in this section. Amendment effective July 1, 1993.

19-7-802. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service in the public employees', highway patrol officers', firefighters' unified, game wardens', or municipal police officers' retirement system for which the member has received a refund of the member's membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the sheriffs' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit upon contribution by the employee of the actuarial cost of granting this service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19.

History: En. Sec. 3, Ch. 145, L. 1981; amd. Sec. 3, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 141, Ch. 265, L. 1993; Sec. 19-7-309, MCA 1991; redes. 19-7-802 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1)(a), in first sentence before "service", deleted "creditable" and in second sentence substituted "pension trust fund" for "retirement fund" and after "based on" deleted "his compensation earned as a member of the former system and the normal contribution rate according to"; in (1)(b), near beginning, substituted "division" for "administrator" and near end substituted "compensation" for "salaries"; in (2)(a), in second sentence, substituted "compensation" for "salary" and in third sentence substituted "the board shall" for "the board may", after "service credit" deleted "subject to the provisions of 19-7-201(2)", and near end, after "based on", deleted "the employee's compensation earned during this period of service and the normal contribution rate according to"; and made minor changes in style. Amendment effective July 1, 1993.

19-7-803. Election to qualify previous military service. (1) A member with 15 years or more of service credit may, at any time prior to retirement, make a written election with the board to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, except as provided in subsection (3), if the member is not otherwise eligible to receive credit. To qualify military service, the member shall contribute to the account the actuarial cost of granting the service, to be determined by the board based on the most recent actuarial valuation of the system. The member may not qualify more of the member's military service than the member has service credits in the sheriffs' retirement system in excess of 15 years. Military service purchased under this section is not membership service and may not be used in determining eligibility for a service retirement benefit.

(2) If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify the member's military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time.

(3) The combined total purchase of additional years of service under the provisions of 19-7-804 and this section may not exceed 5 years.

History: En. Sec. 1, Ch. 31, L. 1987; amd. Sec. 2, Ch. 214, L. 1991; amd. Sec. 142, Ch. 265, L. 1993; Sec. 19-7-310, MCA 1991; redes. 19-7-803 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), near beginning of first sentence after "service", inserted "credit", at end of second sentence, after "based on", substituted "the most recent actuarial valuation of the system" for "his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, plus accrued interest. Interest accrues from the date on which the member has completed the number of service years in excess of 15 needed to qualify the military service to the date he contributes", in third sentence, after "has service", inserted "credits", and in fourth sentence, after "section", inserted "is not membership service and" and at end, after "service retirement", inserted "benefit"; in (2), in first sentence, substituted "military retirement benefits" for "normal service retirement benefits"; and made minor changes in style. Amendment effective July 1, 1993.

19-7-804. Election to purchase additional service. (1) Except as provided in subsection (6), at any time before retirement, a member may make a written election with the board to purchase 1 additional year of service credit for every 5 years of membership service.

(2) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.

(3) To qualify this service, a member shall:

(a) make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(4) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board. Payments must be completed prior to retirement.

(5) Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify for the purchase of military service under 19-7-803.

(6) The combined total of additional years of service purchased under the provisions of 19-7-803 and this section may not exceed 5 years.

History: En. Sec. 1, Ch. 214, L. 1991; amd. Sec. 143, Ch. 265, L. 1993; Sec. 19-7-311, MCA 1991; redes. 19-7-804 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), after first "service", inserted "credit" and at end substituted "membership service" for "creditable service"; and in (3)(b) substituted "pension trust fund" for "retirement fund" and at end, after "based on", substituted "the most recent actuarial valuation of the system" for "(i) the member's compensation for the 12 months immediately preceding the date of his election to cover the service under the sheriffs' retirement system; and

(ii) the total contribution rate in effect at the time the service is purchased." Amendment effective July 1, 1993.

Part 9

Survivorship Benefits and Death Payments

19-7-901. Payments in case of death before retirement. If a member dies before retirement, the member's designated beneficiary is entitled to elect one of the following options for which the member qualified and the designated beneficiary qualifies:

(1) a lump-sum payment of the accumulated contributions standing to the member's credit at the member's death;

(2) a retirement benefit based on 2% of the final average salary for each year of service credit up to a maximum of 25 years, reduced on an actuarially equivalent basis from age 65 or the date the member would have completed 25 years of membership service, whichever provides a larger retirement benefit;

(3) a retirement benefit based on one-half of final average salary if the board finds that the member died as a direct and proximate result of injuries received in the course of employment.

History: En. 68-2618 by Sec. 18, Ch. 178, L. 1974; amd. Sec. 7, Ch. 59, L. 1977; amd. Sec. 1, Ch. 93, L. 1977; R.C.M. 1947, 68-2618; amd. Sec. 3, Ch. 105, L. 1981; amd. Sec. 2, Ch. 81, L. 1987; amd. Sec. 150, Ch. 265, L. 1993; Sec. 19-7-604, MCA 1991; redes. 19-7-901 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in introductory clause, in two places before "beneficiary", inserted "designated"; in (1) substituted "accumulated contributions" for "accumulated deductions"; in (2), in two places, substituted "retirement benefit" for "retirement allowance", near beginning substituted "final average salary" for "final salary", after first "service" inserted "credit", near middle substituted "reduced on an actuarially equivalent basis" for "reduced actuarially", and substituted "membership service" for "creditable service"; in (3), near beginning, substituted "retirement benefit" for "retirement allowance", substituted "final average salary" for "final salary", and after "salary" deleted "reduced to 25% of final salary for the period of time the beneficiary receives workers' compensation"; deleted former (2) that read: "(2) On or before July 1, 1982, a beneficiary who is receiving a death benefit may elect a different option under subsection (1). Any change in options is subject to actuarial adjustments for benefits received prior to the change as determined by the board"; and made minor changes in style. Amendment effective July 1, 1993.

Part 10

Optional Forms of Retirement Benefits

19-7-1001. Optional forms of benefits. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4—upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement.

History: En. 68-2626 by Sec. 26, Ch. 178, L. 1974; amd. Sec. 10, Ch. 59, L. 1977; R.C.M. 1947, 68-2626; amd. Sec. 2, Ch. 126, L. 1987; amd. Sec. 151, Ch. 265, L. 1993; Sec. 19-7-701, MCA 1991; redes. 19-7-1001 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted (1) regarding optional forms of benefits for former (1) and (2) that read: "(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2—upon his death, the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(b) Option 3—upon his death, one-half of the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(c) Option 4—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser retirement allowance, are the actuarial equivalent of his retirement allowance and have been approved by the board"; inserted (2) regarding written application; inserted (3) regarding cancellation of election of option; and inserted (4) regarding death after retirement and within 30 days of election or changed election. Amendment effective July 1, 1993.

Part 11

Reemployment of Retired Members

19-7-1101. Reemployment of a retired member. (1) A retired member who returns to service for at least 60 working days in a calendar year is an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to service for less than 60 working days in a calendar year is excluded from membership. The retirement benefit of a retired member employed in service must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year.

History: En. Sec. 152, Ch. 265, L. 1993.

Compiler's Comments

1993 Name Change: Section 6(2), Ch. 261, L. 1993, provided: "In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise." The term was subsequently changed by the Code Commissioner in this section. Amendment effective July 1, 1993.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

CHAPTER 8

GAME WARDENS' RETIREMENT

Part 1 — General Provisions

19-8-101. Definitions.
19-8-102. Game wardens' retirement system established.
19-8-103. Repealed.
19-8-104. Repealed.
19-8-105. Short title.

Part 2 — Administration (Repealed)

19-8-201. Repealed.
19-8-202. Repealed.
19-8-203. Repealed.
19-8-204. Terminated.

Part 3 — Eligibility, Membership, and Vesting

19-8-301. Membership — inactive vested members — inactive nonvested members.
19-8-302. Ineligibility for public employees' retirement system — transfer of membership.
19-8-303. Repealed.
19-8-304. Renumbered 19-8-901 by Code Commissioner, 1993.
19-8-305. Repealed.
19-8-306. Renumbered 19-8-902 by Code Commissioner, 1993.
19-8-307. Renumbered 19-8-903 by Code Commissioner, 1993.

Part 4 — Creation and Management of Retirement Account (Repealed. Sec. 236, Ch. 265, L. 1993)

Part 5 — Contributions and Refunds

19-8-501. Contributions to the pension trust fund.
19-8-502. Member's contribution.
19-8-503. Repealed.
19-8-504. State's contribution.
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Part 6 — Service Retirement Benefits

19-8-601. Time of retirement — commencement of benefit.
19-8-602. Repealed.
19-8-603. Service retirement benefit.
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Part 7 — Disability Retirement Benefits

19-8-701. Disability retirement benefit.
19-8-702. Repealed.
19-8-703. Renumbered 19-8-1001 by Code Commissioner, 1993.
19-8-704. Renumbered 19-8-1002 by Code Commissioner, 1993.
19-8-705 through 19-8-710 reserved.
19-8-711. Repealed.
19-8-712. Medical examination of disability retiree — cancellation of benefit.

Part 8 — Optional Forms of Benefit Payments

19-8-801. Optional forms of benefits.
19-8-802 through 19-8-807. Repealed.
19-8-808. Renumbered 19-8-1101 by Code Commissioner, 1993.
19-8-809. Renumbered 19-8-1102 by Code Commissioner, 1993.

19-8-810. Renumbered 19-8-1103 by Code Commissioner, 1993.
19-8-811 through 19-8-815 reserved.
19-8-816. Renumbered 19-8-1104 by Code Commissioner, 1993.

Part 9 — Service Credit

19-8-901. Election to qualify military service.
19-8-902. Qualification of other Montana public service.
19-8-903. Employment in United States government.

Part 10 — Survivorship Benefits and Death Payments

19-8-1001. Benefits upon employment-related death.
19-8-1002. Postretirement death payments.
19-8-1003. Nonduty-related death of active member.

Part 11 — Postretirement Adjustments

19-8-1101. Eligibility for postretirement adjustment.
19-8-1102. Funding for postretirement adjustment — reserve fund.
19-8-1103. Payment and amount of postretirement adjustment.
19-8-1104. Minimum monthly benefit.
19-8-1105 through 19-8-1109 reserved.
19-8-1110. Ad hoc cost-of-living increase.

Part 1
General Provisions

19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any deductions are made and exclusive of maintenance, allowances, and expenses.

(2) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service upon which contributions were made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, sick leave, and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(3) "State game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

History: (1) thru (11)En. Sec. 1, Ch. 130, L. 1963; amd. Sec. 16, Ch. 326, L. 1974; amd. Sec. 1, Ch. 8, L. 1977; amd. Secs. 1, 4, Ch. 132, L. 1977; amd. Sec. 1, Ch. 330, L. 1977; amd. Sec. 4, Ch. 332, L. 1977; Sec. 68-1401, R.C.M. 1947; (12)En. Sec. 2, Ch. 130, L. 1963; amd. Sec. 2, Ch. 8, L. 1977; amd. Sec. 2, Ch. 330, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 68-1402, R.C.M. 1947; R.C.M. 1947, 68-1401, 68-1402; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 592, L. 1981; amd. Sec. 11, Ch. 282, L. 1983; amd. Sec. 6, Ch. 45, L. 1987; amd. Sec. 12, Ch. 196, L. 1989; amd. Sec. 158, Ch. 265, L. 1993; amd. Sec. 12, Ch. 640, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 265 inserted definition of compensation; deleted definition of account that read: ""Account" means the Montana state game wardens' retirement pension trust fund"; deleted definition of accumulated deductions or accumulated contributions that read: ""Accumulated deductions" or "accumulated contributions" means the sum of all contributions standing to the credit of a member's individual account together with the regular interest thereon"; deleted definition of actuarial equivalent that read: ""Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; deleted definition of beneficiary that read: ""Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, witnessed and filed with the board"; deleted definition of Board that read: ""Board" means the public employees' retirement board"; deleted definition of contributor that read: ""Contributor" means any person who has accumulated deductions in the account standing to his credit"; substituted definition of final average salary for definition of final salary and near beginning of first sentence substituted "average monthly compensation received by a member" for "average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses", after "total" deleted "retirement", and at end substituted "number of months served" for "number of years served" and in second sentence substituted "retirement benefit" for "retirement allowance" and at end substituted "final average salary" for "final salary"; deleted definition of member's annuity that read: ""Member's annuity" means payments for life derived from contributions made by the contributor"; deleted definition of retired state game warden that read: ""Retired state game warden" means any person in receipt of a retirement allowance under this chapter"; deleted definition of retirement allowance that read: ""Retirement allowance" means the state annuity plus the member's annuity"; deleted definition of state annuity that read: ""State annuity" means payments for life derived from contributions made by the state from department of fish, wildlife, and parks moneys"; and made minor changes in style. Amendment effective July 1, 1993.

Section 12 (a coordination instruction), Ch. 640, L. 1993, in definition of final average salary, in second sentence before "sick leave", inserted "severance pay".

19-8-102. Game wardens' retirement system established. There is a retirement system known as the state game wardens' retirement system, which is governed by the provisions of chapter 2 and this chapter.

History: En. 68-1402.1 by Sec. 3, Ch. 8, L. 1977; R.C.M. 1947, 68-1402.1; amd. Sec. 157, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 before "state game wardens' retirement system" deleted "Montana" and inserted reference to chapter 2. Amendment effective July 1, 1993.

19-8-103. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 26, Ch. 130, L. 1963; R.C.M. 1947, 68-1426.

19-8-104. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 23, Ch. 130, L. 1963; R.C.M. 1947, 68-1423(part).

19-8-105. Short title. This chapter may be cited as "The Game Wardens' Retirement Act".

History: En. Sec. 156, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 2
Administration (Repealed)

19-8-201. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 6, Ch. 130, L. 1963; amd. Sec. 5, Ch. 8, L. 1977; amd. Sec. 6, Ch. 332, L. 1977; R.C.M. 1947, 68-1406(1).

19-8-202. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 6, Ch. 130, L. 1963; amd. Sec. 5, Ch. 8, L. 1977; amd. Sec. 6, Ch. 332, L. 1977; R.C.M. 1947, 68-1406(2).

19-8-203. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 10, Ch. 130, L. 1963; amd. Sec. 8, Ch. 8, L. 1977; amd. Sec. 5, Ch. 330, L. 1977; amd. Sec. 1, Ch. 578, L. 1977; R.C.M. 1947, 68-1410(2); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 4, Ch. 235, L. 1981; amd. Sec. 12, Ch. 282, L. 1983.

19-8-204. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

Part 3
Eligibility, Membership, and Vesting

19-8-301. Membership — inactive vested members — inactive nonvested members. (1) Except as provided in 19-8-302, each state game warden who is assigned to law enforcement in the department of fish, wildlife, and parks shall become a member of the retirement system when first becoming a state game warden. All state game wardens are members of the retirement system so long as they are actively employed in that capacity.

(2) A member with at least 10 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(3) A member with less than 10 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 6, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977; R.C.M. 1947, 68-1407(part); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 159, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), near beginning of first sentence after "state game warden", deleted "including all warden supervisory personnel, whose salary or compensation for services is paid out of the department of fish, wildlife, and parks moneys and" and at beginning of second sentence deleted "Except as provided in 19-8-302"; inserted (2) regarding inactive vested member; inserted (3) regarding inactive nonvested member; and made minor changes in style. Amendment effective July 1, 1993.

19-8-302. Ineligibility for public employees' retirement system — transfer of membership. (1) A person who is a member of the retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement in the department of fish, wildlife, and parks may retain membership in the retirement system by filing a written election of intent with the board no later than 30 days after transfer to the new position.

(2) A person who is a member of the public employees' retirement system who transfers to a position as a state game warden may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election of intent with the board no later than 30 days after transfer to the new position.

History: En. Sec. 29, Ch. 130, L. 1963; amd. Sec. 16, Ch. 8, L. 1977; amd. Sec. 7, Ch. 330, L. 1977; R.C.M. 1947, 68-1429; amd. Sec. 160, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 deleted former (1) that read: "(1) After July 1, 1963, no new state employee appointed as a state game warden will be eligible for membership in the public employees' retirement system, and the provisions of The Public Employees' Retirement System Act will not apply to state game wardens"; and in (1) and (2), before "30 days", deleted "August 1, 1977, or no later than" and after "position" deleted "whichever is later". Amendment effective July 1, 1993.

19-8-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: (1)En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 6, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977; Sec. 68-1407, R.C.M. 1947; (2)En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974; Sec. 68-1408, R.C.M. 1947; R.C.M. 1947, 68-1407(part), 68-1408(part).

19-8-304. Renumbered 19-8-901 by Code Commissioner, 1993.

19-8-305. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 19, Ch. 130, L. 1963; amd. Sec. 7, Ch. 332, L. 1977; R.C.M. 1947, 68-1419(part).

19-8-306. Renumbered 19-8-902 by Code Commissioner, 1993.

19-8-307. Renumbered 19-8-903 by Code Commissioner, 1993.

Part 4

Creation and Management of Retirement Account (Repealed. Sec. 236, Ch. 265, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

19-8-401. En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974; R.C.M. 1947, 68-1408(part); amd. Sec. 13, Ch. 282, L. 1983.

19-8-402. En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(2).

19-8-403. En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(3); amd. Sec. 4, Ch. 221, L. 1991.

19-8-404. En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(4).

19-8-405. En. Sec. 28, Ch. 130, L. 1963; R.C.M. 1947, 68-1428; amd. Sec. 14, Ch. 282, L. 1983.

19-8-406. En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(5).

Part 5
Contributions and Refunds

19-8-501. Contributions to the pension trust fund. The following must be paid to the division and must be credited to the pension trust fund:

(1) all contributions by the state from department of fish, wildlife, and parks money;

(2) all contributions by the state game wardens; and

(3) all interest on and increase of the investments and money in the pension trust fund.

History: En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(1); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 161, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in two places substituted "pension trust fund" for "account"; near beginning of introductory clause substituted "division" for "board" and after "credited" deleted "by the board"; and made minor changes in style. Amendment effective July 1, 1993.

19-8-502. Member's contribution. (1) Every member is required to contribute into the pension trust fund a sum equal to 7.9% of the member's monthly compensation, which sum must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and the member's compensation as used to define the member's final average salary in 19-8-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. Sec. 9, Ch. 130, L. 1963; amd. Sec. 7, Ch. 8, L. 1977; R.C.M. 1947, 68-1409(part); amd. Sec. 3, Ch. 249, L. 1985; amd. Sec. 14, Ch. 464, L. 1985; amd. Sec. 162, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in two places, substituted "pension trust fund" for "account" and substituted "monthly compensation" for "monthly salary"; in (4), near end of first sentence, substituted "final average salary" for "final salary"; and made minor changes in style. Amendment effective July 1, 1993.

19-8-503. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 16, Ch. 130, L. 1963; R.C.M. 1947, 68-1416; amd. Sec. 2, Ch. 592, L. 1981; amd. Sec. 5, Ch. 50, L. 1991.

19-8-504. State's contribution. (1) To fund the employer's portion of the normal cost of benefits under this chapter, each month the state treasurer shall pay to the pension trust fund:

(a) out of the department of fish, wildlife, and parks funds, a sum equal to 7.15% of all members' salaries; and

(b) out of the funds collected as fines and forfeited bonds under the provisions of 87-1-601(1) through (5) or funds distributed under 3-10-601(4), an amount equal to 1% of all members' salaries.

(2) In addition to the contributions provided in subsection (1), the state treasurer shall pay to the pension trust fund the balance of the funds distributed to the fish and game account pursuant to 3-10-601 until the unfunded liability in the pension trust fund is fully paid and a verification statement to that effect is given to the state treasurer by the board.

History: En. Sec. 10, Ch. 130, L. 1963; amd. Sec. 8, Ch. 8, L. 1977; amd. Sec. 5, Ch. 330, L. 1977; amd. Sec. 1, Ch. 578, L. 1977; R.C.M. 1947, 68-1410(1); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 640, L. 1979; amd. Sec. 18, Ch. 549, L. 1981; amd. Sec. 19, Ch. 703, L. 1985; amd. Sec. 12, Ch. 557, L. 1987; amd. Sec. 1, Ch. 609, L. 1991; amd. Sec. 163, Ch. 265, L. 1993; amd. Sec. 3, Ch. 450, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 265 in three places substituted "pension trust fund" for "account", near middle substituted "collections must be paid" for "collections are statutorily appropriated", and near end substituted "is paid" for "is solvent"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 450 at beginning of introductory clause of (1) inserted "To fund the employer's portion of the normal cost of benefits under this chapter" and at end substituted "pension trust fund" for "account"; in (1)(a) and in two places in (1)(b) substituted "funds" for "moneys"; at end of (1)(b) substituted "an amount equal to 1% of all members' salaries" for "all such collections are statutorily appropriated to the account"; at beginning of (2) inserted "In addition to the contributions provided in subsection (1), the state treasurer shall pay to the pension trust fund the balance of the funds distributed to the fish and game account pursuant to 3-10-601" and near middle substituted "fully paid" for "solvent"; and made minor changes in style. Amendment effective July 1, 1993.

The Ch. 265 substitution of "collections must be paid" for "collections are statutorily appropriated" in (1)(b) was rendered meaningless by the Ch. 450 amendment.

Coordination: Section 7, Ch. 450, L. 1993, provided: "If Senate Bill No. 203 is not passed and approved, then [this act] is void." Senate Bill No. 203 was passed and approved as Ch. 367, L. 1993; therefore, Ch. 450, L. 1993, is valid.

19-8-505. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 138, L. 1991.

Part 6

Service Retirement Benefits

19-8-601. Time of retirement — commencement of benefit. (1) Any member in service who has completed at least 20 years of membership service, reached the age of 50 years, and terminated service may retire with a service retirement benefit upon written application to the board.

(2) (a) Except as provided in subsection (2)(b), the retirement benefit may commence on the first day of the month following the member's last day of service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 60th birthday.

History: En. Sec. 11, Ch. 130, L. 1963; R.C.M. 1947, 68-1411; amd. Sec. 3, Ch. 592, L. 1981; amd. Sec. 4, Ch. 53, L. 1983; amd. Sec. 3, Ch. 86, L. 1985; amd. Sec. 1, Ch. 249, L. 1985; amd. Sec. 13, Ch. 196, L. 1989; amd. Sec. 167, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in three places substituted "retirement benefit" for "retirement allowance"; in (1) substituted "membership service" for "creditable service" and substituted "terminated service" for "terminated covered employment"; in (2)(a) substituted "last day of service" for "last day of covered employment" and substituted "inactive member" for "terminated member"; in (2)(b) substituted "inactive member" for "terminated member"; and made minor changes in style. Amendment effective July 1, 1993.

19-8-602. Repealed. Sec. 8, Ch. 53, L. 1983.

History: En. Sec. 12, Ch. 130, L. 1963; R.C.M. 1947, 68-1412.

19-8-603. Service retirement benefit. The service retirement benefit is equal to 2% of the member's final average salary for each year of service credit.

History: (1)En. Sec. 13, Ch. 130, L. 1963; amd. Sec. 1, Ch. 111, L. 1967; amd. Sec. 9, Ch. 8, L. 1977; Sec. 68-1413, R.C.M. 1947; (2)En. Sec. 9, Ch. 130, L. 1963; amd. Sec. 7, Ch. 8, L. 1977; Sec. 68-1409, R.C.M. 1947; R.C.M. 1947, 68-1409(part), 68-1413; amd. Sec. 2, Ch. 249, L. 1985; amd. Sec. 2, Ch. 139, L. 1989; amd. Sec. 168, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present text regarding service retirement benefit for former section that read: "(1) Upon retirement from service, the service retirement allowance consists of the state annuity plus the member's annuity.

(2) Except as provided in 19-8-816, the amount of the retirement allowance must equal 2% of the member's final salary for each year of creditable service." Amendment effective July 1, 1993.

19-8-604. Early retirement benefit. If a member is discontinued from service after having completed 10 years of membership service but before reaching retirement age, the member must, upon filing a written application with the board, be paid a retirement benefit beginning on the member's 55th birthday calculated under the provisions of 19-8-603.

History: En. Sec. 15, Ch. 130, L. 1963; amd. Sec. 10, Ch. 8, L. 1977; R.C.M. 1947, 68-1415; amd. Sec. 4, Ch. 592, L. 1981; amd. Sec. 5, Ch. 53, L. 1983; amd. Sec. 169, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 near beginning substituted "member" for "contributor", before "discontinued" deleted "involuntarily", substituted "membership service" for "total service", after "be paid" deleted "in one of the following ways that he elects:

(1) the full amount of his accumulated deductions", and substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

Part 7

Disability Retirement Benefits

19-8-701. Disability retirement benefit. (1) A member who is determined by the board to be disabled must be granted a disability retirement benefit in an amount calculated on the actuarial equivalent of the service retirement benefit standing to the member's credit at the time of the member's disability retirement.

(2) If the disability is a direct result of any service to the department of fish, wildlife, and parks in line of duty and the member has at least 10 years of membership service, the member who is disabled must be retired on a disability retirement benefit of one-half of the member's final average salary.

History: En. Sec. 14, Ch. 130, L. 1963; amd. Sec. 20, Ch. 326, L. 1974; R.C.M. 1947, 68-1414; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 3, Ch. 139, L. 1989; amd. Sec. 170, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present text regarding disability retirement benefit for former section that read: "(1) If the total disability of a contributor is permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement, except as provided in 19-8-816.

(2) If the total disability is a direct result of any service to the department of fish, wildlife, and parks in line of duty and the contributor has had over 10 years of service, the state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half of his final salary, except as provided in 19-8-816." Amendment effective July 1, 1993.

19-8-702. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 21, Ch. 130, L. 1963; amd. Sec. 12, Ch. 8, L. 1977; amd. Sec. 6, Ch. 330, L. 1977; R.C.M. 1947, 68-1421; amd. Sec. 14, Ch. 196, L. 1989.

19-8-703. Renumbered 19-8-1001 by Code Commissioner, 1993.

19-8-704. Renumbered 19-8-1002 by Code Commissioner, 1993.

19-8-705 through 19-8-710 reserved.

19-8-711. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 7, Ch. 597, L. 1981.

19-8-712. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3). If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) A recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be

reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in the same classification within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(4) The department of fish, wildlife, and parks may request a medical or psychological review as to the ability of the recipient to return to work as a game warden. If the board's findings are upheld, the department of fish, wildlife, and parks shall pay the cost of the review.

History: En. Sec. 8, Ch. 597, L. 1981; amd. Sec. 3, Ch. 138, L. 1989; amd. Sec. 171, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to disability retirement benefit for references to disability retirement allowance or retirement allowance; in (2), at end of first sentence, substituted "monthly benefit" for "monthly allowance"; and made minor changes in style. Amendment effective July 1, 1993.

Part 8

Optional Forms of Benefit Payments

19-8-801. Optional forms of benefits. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted in lieu of all other benefits under this chapter into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4—upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement.

History: En. Sec. 27, Ch. 130, L. 1963; amd. Sec. 15, Ch. 8, L. 1977; R.C.M. 1947, 68-1427; amd. Sec. 3, Ch. 126, L. 1987; amd. Sec. 175, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted (1) regarding optional forms of benefits for former (1) and (2) that read: "(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 3—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 4—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board"; inserted (2) regarding written application; inserted (3) regarding cancellation of election of option; and inserted (4) regarding death after retirement and within 30 days of election or changed election. Amendment effective July 1, 1993.

19-8-802 through 19-8-807. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-8-802. En. Sec. 19, Ch. 130, L. 1963; amd. Sec. 7, Ch. 332, L. 1977; R.C.M. 1947, 68-1419(part).

19-8-803. En. Sec. 24, Ch. 130, L. 1963; R.C.M. 1947, 68-1424.

19-8-804. En. Sec. 23, Ch. 130, L. 1963; R.C.M. 1947, 68-1423(part).

19-8-805. En. Sec. 20, Ch. 130, L. 1963; amd. Sec. 5, Ch. 214, L. 1977; R.C.M. 1947, 68-1420; amd. Sec. 15, Ch. 464, L. 1985; amd. Sec. 11, Ch. 823, L. 1991.

19-8-806. En. 68-1420.1 by Sec. 6, Ch. 214, L. 1977; R.C.M. 1947, 68-1420.1.

19-8-807. En. Sec. 1, Ch. 14, L. 1987.

19-8-808. Renumbered 19-8-1101 by Code Commissioner, 1993.

19-8-809. Renumbered 19-8-1102 by Code Commissioner, 1993.

19-8-810. Renumbered 19-8-1103 by Code Commissioner, 1993.

19-8-811 through 19-8-815 reserved.

19-8-816. Renumbered 19-8-1104 by Code Commissioner, 1993.

Part 9

Service Credit

19-8-901. Election to qualify military service. (1) A member with 15 years or more of service credit qualified under this chapter may, at any time prior to retirement, make a written election with the board to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service.

(2) To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. The member may not qualify more years of military service than the member has years of service credits in excess of 15 years.

History: En. Sec. 22, Ch. 130, L. 1963; amd. Sec. 13, Ch. 8, L. 1977; R.C.M. 1947, 68-1422; (3), (4)En. Sec. 1, Ch. 119, L. 1983; amd. Sec. 164, Ch. 265, L. 1993; Sec. 19-8-304, MCA 1991; redes. 19-8-901 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 deleted former (1) and (2) that read: "(1) A state game warden inducted into the armed forces of the United States has the option to:

(a) continue his payments into the account; or

(b) allow the board to make his payments for him during his military service, in which event he must repay the account the full amount of the payments within 2 years after his return to active state game warden status.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall receive credit for his service in the armed forces of the United States as if it were service as a state game warden"; in (1), near beginning, substituted "service credit" for "state service" and at end, after "service", deleted "pursuant to subsections (1) and (2)"; in (2), in first sentence, substituted "pension trust fund" for "retirement fund", after "granting the service" inserted "based on the most recent actuarial valuation of the system as", and after "determined by the board" deleted "based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes" and in second sentence, near end, substituted "years of service credits" for "years of creditable state service"; and made minor changes in style. Amendment effective July 1, 1993.

19-8-902. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or municipal police officers' retirement system for which the member has received a refund of the member's accumulated contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the game wardens' retirement system, as determined by the board, based on the most recent actuarial valuation of the system minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the game wardens' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the game wardens' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the game wardens' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19.

History: En. Sec. 4, Ch. 145, L. 1981; amd. Sec. 4, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 165, Ch. 265, L. 1993; Sec. 19-8-306, MCA 1991; redes. 19-8-902 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1)(a), in first sentence, substituted "service credit" for "creditable service" and at end substituted "accumulated contributions" for "membership contributions" and in second sentence substituted "pension trust fund" for "retirement fund", after "based on" deleted "his compensation earned as a member of the former system and the normal contribution rate according to", and after "actuarial valuation" inserted "of the system"; in (1)(b), near beginning, substituted "division" for "administrator"; in (2)(a), at beginning of third sentence, substituted "board shall" for "board may", substituted "subject to rules adopted by the board" for "subject to the provisions of 19-8-201", and after "based on" deleted "the employee's compensation earned during this period of service and the normal contribution rate according to"; and made minor changes in style. Amendment effective July 1, 1993.

19-8-903. Employment in United States government. (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may qualify the federal employment in the retirement system under subsection (2) of this section, provided that:

(a) the member has accumulated at least 5 years of membership service; and

(b) the member returns to full-time service for at least 1 year after completing employment in the United States government.

(2) A member who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) pay an amount equal to the normal employer and employee contributions plus interest within 2 years after the member's return to active state game warden status.

(3) Compensation earned while on assignment to an agency of the United States government must be considered compensation for purposes of the retirement system and may be included in the determination of final average salary, provided that the final average salary cannot exceed 100% of the member's highest monthly compensation earned as a state game warden.

History: En. Sec. 1, Ch. 260, L. 1981; amd. Sec. 166, Ch. 265, L. 1993; Sec. 19-8-307, MCA 1991; redes. 19-8-903 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to member for references to state game warden or warden; in (1) substituted "federal employment" for "federal service" and before "retirement system" deleted "game wardens'"; in (1)(a), at end, substituted "membership service" for "service in the game wardens' retirement system"; in (1)(b), after "full-time service", deleted "covered by the game wardens' retirement system" and substituted "employment" for "service"; in (2)(a), at end, substituted "pension trust fund" for "account"; in (2)(b), at beginning, substituted "pay" for "qualify this service by paying"; in (3), in two places near beginning, substituted "compensation" for "salary", before "retirement system" deleted "game wardens'", after "determination of" substituted "final average salary" for "final salary", after "that the" substituted "final average salary" for "final salary", and near end substituted "highest monthly compensation" for "highest annual salary"; and made minor changes in style. Amendment effective July 1, 1993.

Part 10
Survivorship Benefits and Death Payments

19-8-1001. Benefits upon employment-related death. If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service, a monthly survivorship benefit must be paid to the member's designated beneficiary equal to 50% of the final average salary of the member.

History: En. Sec. 17, Ch. 130, L. 1963; amd. Sec. 11, Ch. 8, L. 1977; amd. Sec. 2, Ch. 578, L. 1977; R.C.M. 1947, 68-1417; amd. Sec. 4, Ch. 139, L. 1989; amd. Sec. 172, Ch. 265, L. 1993; Sec. 19-8-703, MCA 1991; redes. 19-8-1001 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 near beginning substituted "member" for "contributor", substituted "service" for "employment", substituted "monthly survivorship benefit" for "retirement allowance", before "beneficiary" inserted "designated", and after "beneficiary" substituted "equal to 50% of the final average salary of the member" for "consisting of:

(1) a member's annuity which is the actuarial equivalent of the contributor's accumulated deductions; and

(2) a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the contributor, except as provided in 19-8-816, less the amount which is paid to the beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable"; and made minor changes in style. Amendment effective July 1, 1993.

19-8-1002. Postretirement death payments. If a retired member who has not chosen an optional retirement benefit under 19-8-801 dies before receiving an amount equal to the present value of the member's service retirement benefit under 19-8-603 as it was at the time of the member's retirement, the balance must be paid to the member's designated beneficiary in a lump-sum payment. At the option of the designated beneficiary, the lump-sum payment may be annuitized and paid over the beneficiary's lifetime; however, the payment is not a benefit subject to increases.

History: En. Sec. 18, Ch. 130, L. 1963; R.C.M. 1947, 68-1418; amd. Sec. 173, Ch. 265, L. 1993; Sec. 19-8-704, MCA 1991; redes. 19-8-1002 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present text regarding postretirement death payments for former section that read: "(1) If a retired state game warden dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(2) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in 19-8-604." Amendment effective July 1, 1993.

19-8-1003. Nonduty-related death of active member. If a member dies before reaching retirement age, the member's designated beneficiary may choose either a lump-sum refund of the member's accumulated contributions or the actuarial equivalent of the early retirement benefit as provided in 19-8-604.

History: En. Sec. 174, Ch. 265, L. 1993.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 11
Postretirement Adjustments

19-8-1101. Eligibility for postretirement adjustment. (1) Except as provided in subsection (2), a benefit recipient is eligible to receive a postretirement adjustment as provided in 19-8-1103 if the recipient is receiving a:

(a) service retirement benefit and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or

(b) disability or survivorship benefit.

(2) A benefit recipient is ineligible to receive a postretirement adjustment under subsection (1) unless the monthly service, disability, or survivorship benefit has been paid for at least 24 consecutive months on or before June 30 in the year the adjustment is made.

History: En. Sec. 1, Ch. 115, L. 1989; amd. Sec. 176, Ch. 265, L. 1993; Sec. 19-8-808, MCA 1991; redes. 19-8-1101 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) and (2) substituted "benefit recipient" for "member or beneficiary"; in (1)(a) substituted "service retirement benefit" for "service retirement allowance"; in (1)(b) substituted "survivorship benefit" for "survivorship allowance"; in (2) substituted "survivorship benefit" for "survivorship allowance"; and made minor changes in style. Amendment effective July 1, 1993.

19-8-1102. Funding for postretirement adjustment — reserve fund. (1) At the end of each fiscal year, the board shall determine the total investment income earned on the pension trust fund for that fiscal year. From this amount, the board shall subtract the:

(a) actuarial amount required to fund the retirement system for the fiscal year; and

(b) retirement system's administrative and investment expenses for the fiscal year.

(2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of investment income earned on that portion of the pension trust fund balance representing retired members.

(b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

(3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment to eligible benefit recipients under 19-8-1103.

(4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement adjustment of at least $1 under 19-8-1103, an adjustment may not be made in that calendar year.

(5) The amount available for payment of the postretirement adjustment is limited to an amount that would provide a percentage increase in the average service, disability, or survivorship benefit of all eligible benefit recipients, when combined with the postretirement adjustment, that is equal to or less than the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers compiled by the bureau of labor statistics, United States department of labor, or its successor agency.

History: En. Sec. 2, Ch. 115, L. 1989; amd. Sec. 177, Ch. 265, L. 1993; Sec. 19-8-809, MCA 1991; redes. 19-8-1102 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in two places substituted "pension trust fund" for "retirement fund"; in (3), near end, substituted "benefit recipients" for "members or beneficiaries"; and in (5), near beginning, substituted "postretirement adjustment" for "postretirement allowance", after "survivorship" substituted "benefit" for "allowance", and after "eligible" substituted "benefit recipients" for "members". Amendment effective July 1, 1993.

19-8-1103. Payment and amount of postretirement adjustment. (1) Effective January 1 of each year that funds are available under 19-8-1102, a benefit recipient eligible under 19-8-1101 must receive a postretirement adjustment in the form of a monthly benefit payable for life.

(2) The board shall calculate the amount of the postretirement adjustment payable to an eligible benefit recipient by:

(a) dividing the amount available under 19-8-1102(3) for payment of the postretirement adjustment by the total accumulated years of service credit for all eligible benefit recipients;

(b) multiplying the quotient obtained in subsection (2)(a) by the individual eligible benefit recipient's service credits;

(c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly annuity from actuarial tables adopted by the board; and

(d) applying the provisions contained in subsections (3) and (4).

(3) If a member had elected to receive an optional retirement benefit, the amount of the member's postretirement adjustment must be adjusted by the appropriate optional factor.

(4) If more than one contingent annuitant is receiving a member's retirement benefit, the postretirement adjustment must be divided in the same manner as the member's retirement benefit.

History: En. Sec. 3, Ch. 115, L. 1989; amd. Sec. 178, Ch. 265, L. 1993; Sec. 19-8-810, MCA 1991; redes. 19-8-1103 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in three places substituted references to benefit recipient for references to member or beneficiary; in (2) substituted "postretirement adjustment" for "postretirement allowance"; in (2)(a) substituted "postretirement adjustment" for "postretirement allowance" and after "service" inserted "credit"; in (2)(b) substituted "individual eligible benefit recipient's service credits" for "member's total years of service"; in (3) substituted "optional retirement benefit" for "optional retirement allowance" and substituted "postretirement adjustment" for "postretirement allowance"; in (4), in two places, substituted "retirement benefit" for "retirement allowance" and substituted "contingent annuitant" for "beneficiary"; and made minor changes in style. Amendment effective July 1, 1993.

19-8-1104. Minimum monthly benefit. (1) The following members who retired before July 1, 1989, and their contingent annuitants or their designated beneficiaries receiving monthly survivorship benefits are eligible to receive a minimum monthly benefit as provided in subsection (2):

(a) a member who is 55 years of age or older and who is receiving a service retirement benefit, unless the member is employed in a position covered by a retirement system under Title 19, chapters 3, 5 through 9, 13, and 17 through 20;

(b) a member who is receiving a disability retirement benefit; and

(c) a designated beneficiary receiving a survivorship benefit or a contingent annuitant receiving a service or disability retirement benefit.

(2) (a) Except as provided in subsection (2)(b), on July 1, 1989, the monthly benefit of a benefit recipient eligible under subsection (1) may not be less than 2% of a probationary state game warden's base compensation on July 1, 1989, for each year of the member's service credits.

(b) A monthly retirement benefit increased under subsection (2)(a) may not exceed 60% of a probationary state game warden's base compensation on July 1, 1989.

History: En. Sec. 1, Ch. 139, L. 1989; amd. Sec. 179, Ch. 265, L. 1993; Sec. 19-8-816, MCA 1991; redes. 19-8-1104 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to retirement benefit or benefit for references to retirement allowance; in (1), after "July 1, 1989", substituted "and their contingent annuitants or their designated beneficiaries receiving monthly survivorship benefits" for "or their beneficiaries"; in (1)(c), before "beneficiary", inserted "designated" and substituted "survivorship benefit or a contingent annuitant receiving a service or disability retirement benefit" for "survivorship allowance"; in (2)(a) substituted "benefit recipient" for "member", substituted "base compensation" for "base salary", and at end substituted "service credits" for "creditable service"; in (2)(b) substituted "base compensation" for "base salary"; and made minor changes in style. Amendment effective July 1, 1993.

19-8-1105 through 19-8-1109 reserved.

19-8-1110. Ad hoc cost-of-living increase. (1) The recipient of a monthly service, disability, or survivorship benefit is eligible for a one-time cost-of-living increase on July 1, 1993, if the benefit was initiated before July 1, 1988. A person who received a lump-sum payment or is receiving an annuitized payment is not an eligible recipient under this section.

(2) The amount of the increase for each eligible benefit recipient under subsection (1) must be calculated by:

(a) dividing 5% of the total monthly benefits paid to all eligible benefit recipients as of June 30, 1993, by the total years of service of all eligible benefit recipients as of June 30, 1993;

(b) multiplying the quotient by the individual eligible benefit recipient's years of service, except as provided in subsection (3); and

(c) multiplying the product by the appropriate optional factor for option 2, 3, or 4 benefits described in 19-7-1001.

(3) For the purposes of this section, the increase for a recipient of a disability or survivorship benefit must be calculated as if the recipient had 25 years of service.

(4) The board may adopt rules to implement this section.

History: En. Secs. 1, 2, Ch. 450, L. 1993.

Compiler's Comments

Coordination: Section 7, Ch. 450, L. 1993, provided: "If Senate Bill No. 203 is not passed and approved, then [this act] is void." Senate Bill No. 203 was passed and approved as Ch. 367, L. 1993; therefore, Ch. 450, L. 1993, is valid.

Effective Date: Section 9, Ch. 450, L. 1993, provided: "[This act] is effective July 1, 1993."

CHAPTER 9

POLICE RETIREMENT — STATEWIDE PLAN

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Part 1
General Provisions

19-9-101. Short title. This chapter may be cited as the "Municipal Police Officers' Retirement Act".

History: En. 11-1860 by Sec. 1, Ch. 456, L. 1977; R.C.M. 1947, 11-1860.

19-9-102. Purpose — application of prior law. (1) As cities other than those participating in the statewide police reserve fund provided for in Chapter 335, Laws of 1974, currently have local police retirement funds, the legislature finds and declares that the law regarding such funds, although in conflict with this chapter, cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes local police retirement funds, applies to such cities, other than those of the first and second class, that wish to adopt it. The second, created by this chapter, applies to first- and second-class cities, those other cities that wish to adopt it, and any city that has adopted the above-mentioned statewide police reserve fund.

(2) The following may not be applied in any way to a city operating under the plan created by this chapter: 7-32-4107, 7-32-4120, 7-32-4131, and chapter 19 of this title.

History: En. 11-1892 by Sec. 33, Ch. 456, L. 1977; R.C.M. 1947, 11-1892; amd. Sec. 11, Ch. 114, L. 1979.

19-9-103. Municipal police officers' retirement system established. A municipal police officers' retirement system is established, which is governed by the provisions of chapter 2 and this chapter.

History: En. 11-1862 by Sec. 3, Ch. 456, L. 1977; R.C.M. 1947, 11-1862; amd. Sec. 180, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 inserted reference to chapter 2; and made minor changes in style. Amendment effective July 1, 1993.

19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means the remuneration, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, that a member receives as an active police officer.

(2) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system under 19-9-207.

(4) "Final average compensation" means the monthly compensation of a member, averaged over the last 36 months of his service or, in the event a member has not been a member that long, over the period of membership.

(5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member both becomes age 50 and completes 10 years of membership service.

(6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(7) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the retirement system under 19-9-207.

(8) "Retirement date" means the date on which the first payment of the retirement, disability, or survivorship benefits of a member or a survivor is payable.

(9) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(10) "Survivor" means a surviving spouse or dependent child of the member.

History: (1), (3) thru (15), (17) thru (23)En. 11-1861 by Sec. 2, Ch. 456, L. 1977; Sec. 11-1861, R.C.M. 1947; (16)En. 11-1839.1 by Sec. 1, Ch. 489, L. 1977; Sec. 11-1839.1, R.C.M. 1947; R.C.M. 1947, 11-1839.1, 11-1861; amd. Sec. 1, Ch. 457, L. 1979; amd. Sec. 1, Ch. 186,

L. 1983; amd. Sec. 15, Ch. 282, L. 1983; amd. Sec. 4, Ch. 86, L. 1985; amd. Sec. 1, Ch. 350, L. 1985; amd. Sec. 1, Ch. 178, L. 1991; amd. Sec. 1, Ch. 631, L. 1991; amd. Secs. 1, 9, Ch. 822, L. 1991; amd. Sec. 181, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 inserted definitions of compensation and survivor; deleted definition of administrator that read: ""Administrator" means the public employees' retirement division of the department of administration"; deleted definition of base salary that read: ""Base salary" means the sum of the monthly compensations for each month in a given calendar year"; deleted definition of Board that read: ""Board" means the retirement board described in 2-15-1009"; deleted definition of credited service that read: ""Credited service" means the aggregate of a member's prior service and membership service"; deleted definition of death benefit that read: ""Death benefit" means a monthly annuity paid to a surviving spouse or dependent child or a lump-sum payment made to a beneficiary on behalf of a member who dies before retirement"; in definition of employer substituted "this retirement system" for "this plan"; deleted definition of employer annuity that read: ""Employer annuity" means monthly payments for life derived from employer and state contributions"; substituted definition of final average compensation for definition of final average salary and before "service" deleted "active"; deleted definition of fund that read: ""Fund" means the pension trust fund in the treasury system designated for the use of the plan"; deleted definition of member that read: ""Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer"; deleted definition of member contributions that read: ""Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon"; deleted definition of member's annuity that read: ""Member's annuity" means monthly payments for life derived from member contributions"; deleted definition of membership service that read: ""Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year"; in definition of minimum retirement date substituted "membership service" for "qualified service"; deleted definition of monthly compensation that read: ""Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer"; deleted definition of normal retirement date that read: ""Normal retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member completes 20 or more years of qualified service and has terminated employment as a police officer"; deleted definition of plan that read: ""Plan" means the municipal police officers' retirement system created by this chapter"; deleted definition of police officer that read: ""Police officer" means a law enforcement officer employed by an employer"; in definition of prior plan substituted present text for former text that read: ""Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974"; deleted definition of prior service that read: ""Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan"; deleted definition of qualified service that read: ""Qualified service" means credited service plus any service purchased under the provisions of part 4 of this chapter"; deleted definition of retirement allowance that read: ""Retirement allowance" means the employer annuity plus the member's annuity"; in definition of retirement date substituted "survivorship benefits" for "survivor benefits" and substituted "survivor" for "beneficiary"; deleted definition of totally and permanently disabled that read: ""Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-105. Renumbered 19-9-205 by Code Commissioner, 1993.

19-9-106. Renumbered 19-9-206 by Code Commissioner, 1993.

19-9-107. Renumbered 19-9-207 by Code Commissioner, 1993.

19-9-108. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1886 by Sec. 27, Ch. 456, L. 1977; R.C.M. 1947, 11-1886(1), (3).

Part 2

Extension of Coverage by Local Government Employers

19-9-201. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(1), (2).

19-9-202. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1891 by Sec. 32, Ch. 456, L. 1977; R.C.M. 1947, 11-1891.

19-9-203. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1883 by Sec. 24, Ch. 456, L. 1977; R.C.M. 1947, 11-1883; amd. Sec. 5, Ch. 235, L. 1981; amd. Sec. 16, Ch. 282, L. 1983.

19-9-204. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

19-9-205. Transfer of assets and liabilities from prior plans. All funds and obligations constituting the assets and liabilities of prior plans, regardless of their form or who holds them, must be transferred to the pension trust fund.

History: En. 11-1880 by Sec. 21, Ch. 456, L. 1977; R.C.M. 1947, 11-1880; amd. Sec. 182, Ch. 265, L. 1993; Sec. 19-9-105, MCA 1991; redes. 19-9-205 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 at end of first sentence substituted "pension trust fund" for "account provided for in 19-9-501" and deleted last sentence that read: "The board shall ascertain the amounts to be apportioned to each account on April 19, 1977, and the state treasurer shall transfer such amounts to the appropriate accounts on July 1, 1977"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-206. Effect on members of prior plans. (1) All provisions of this retirement system are effective as to a member whose retirement date occurred prior to July 1, 1977, except that the amount and mode of payment of the member's retirement benefit must remain unchanged.

(2) This chapter may not decrease the benefits of a member under a prior plan.

History: En. 11-1881 by Sec. 22, Ch. 456, L. 1977; R.C.M. 1947, 11-1881; amd. Sec. 183, Ch. 265, L. 1993; Sec. 19-9-106, MCA 1991; redes. 19-9-206 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), near beginning, substituted "retirement system" for "plan" and near end substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-207. Election to join retirement system — transfer of assets. (1) Cities other than those participating in the statewide police reserve fund administered by the board in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the retirement system by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this retirement system. Upon the enactment of an ordinance, the provisions of this retirement system become applicable to the city. Any city enacting an election ordinance shall send a certified copy of the ordinance to the board and shall, as soon as possible, deposit all cash and securities held by it in its local police reserve or retirement fund into the municipal police officers' pension trust fund. The value of the securities must be determined by the board.

(2) The trustees or other administrative head of the local plan as of the effective date of the election shall certify the proportion, if any, of the funds of the plan that represents the accumulated contributions of the active members and the relative shares of the members as of that date. The shares must be charged to the employer and credited to the respective members in the retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with interest, against future required employer contributions for a period determined by the board. Any excess of employer charges over credits under this section are payable by the employer, with interest, for a period of 10 years or less as determined by the board.

History: En. 11-1885 by Sec. 26, Ch. 456, L. 1977; R.C.M. 1947, 11-1885; amd. Sec. 1, Ch. 375, L. 1979; amd. Sec. 1, Ch. 286, L. 1983; amd. Sec. 184, Ch. 265, L. 1993; Sec. 19-9-107, MCA 1991; redes. 19-9-207 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to retirement system for references to plan or chapter; in (1), in first sentence, substituted "board" for "department of administration" and in third sentence, before first "ordinance", inserted "election", after "deposit" deleted "with the board", and at end, after "retirement fund", inserted "into the municipal police officers' pension trust fund"; in (2), in two places, substituted "plan" for "system", in second sentence, after "respective", deleted "individual accounts of the", and at end of last two sentences substituted "board" for "administrator"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-208. Unfunded liabilities. (1) Each city shall pay the employer contribution rate specified in 19-9-703 without credit reduction, except for a city joining the retirement system after June 30, 1982. A city joining the retirement system after June 30, 1982, is subject to the provisions of 19-9-207.

(2) If a city is required to make payments on or after July 1, 1985, to amortize its excess and unfunded liability under a prior plan, these payments must be made by the state auditor from the premium taxes on insurance risks enumerated in 19-18-512.

(3) Subject to judicial review, the board is the determining body as to the interpretation and application of this section.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(4); amd. Sec. 2, Ch. 375, L. 1979; amd. Sec. 2, Ch. 286, L. 1983; amd. Sec. 1, Ch. 661, L. 1983; amd. Sec. 185, Ch. 265, L. 1993; Sec. 19-9-503, MCA 1991; redes. 19-9-208 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 deleted former (1) through (5), (6)(a), and (6)(b) (see 1993 Session Law for text); in (1), at beginning, deleted "On July 1, 1993" and in two places substituted "retirement system" for "plan"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-209. Taxing authority of employers. (1) For the purpose of making contributions required of a city under this chapter, when the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any additional tax authorized by law until the general taxing authority and other revenue available for that purpose is sufficient to meet the demand.

(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section.

History: En. 11-1884 by Sec. 25, Ch. 456, L. 1977; R.C.M. 1947, 11-1884; Sec. 19-9-704, MCA 1991; redes. 19-9-209 by Code Commissioner, 1993.

Part 3

Eligibility, Membership, and Vesting

19-9-301. Active membership — inactive vested member — inactive nonvested member. (1) A police officer becomes an active member of the retirement system:

(a) on the date the police officer's service with an employer commences;

(b) on July 1, 1977, if the police officer is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system as provided in 19-9-207, on the effective date of the election if the police officer is employed by the employer on that date.

(2) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the proof required by the board.

(3) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.

(4) A member with at least 10 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(5) A member with less than 10 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(1), (2); amd. Sec. 186, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) substituted "member of the retirement system" for "member under the plan"; in (1)(a) substituted "service with" for "employment by"; in (1)(c) substituted "retirement system" for "plan"; inserted (3) regarding inactive member; inserted (4) regarding inactive vested member; inserted (5) regarding inactive nonvested member; and made minor changes in style. Amendment effective July 1, 1993.

19-9-302. Ineligibility for other retirement plans. No active member is eligible to be covered under any other mandatory retirement plan for police service to which an employer is required to contribute on his behalf, except the Social Security Act, while he is eligible to be covered by this plan.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(3).

19-9-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1864 by Sec. 5, Ch. 456, L. 1977; R.C.M. 1947, 11-1864.

19-9-304. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1873 by Sec. 14, Ch. 456, L. 1977; R.C.M. 1947, 11-1873; amd. Sec. 6, Ch. 50, L. 1991.

19-9-305. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1865 by Sec. 6, Ch. 456, L. 1977; R.C.M. 1947, 11-1865.

Part 4
Service Credit

19-9-401. Service credit to be cumulative. A member is entitled to benefits based upon the member's total service credits and final average compensation without regard to the number of employers by whom the member was employed or the number of periods of the member's service so that a duplication of service credit does not occur.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(4); amd. Sec. 192, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 near beginning substituted "based upon the member's total service credits and final average compensation" for "based upon the entire period of his credited service and final average salary", substituted "periods of service" for "periods of employment", and near end substituted "service credit" for "credited service"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-402. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1889 by Sec. 30, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(part).

19-9-403. Election to qualify previous military service. (1) A member with 15 years or more of service credit may, at any time prior to retirement, make a written election with the board to qualify up to a maximum of 5 years of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits if the member is not otherwise eligible to receive credit. To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board based on the most recent actuarial valuation of the system. The member may not qualify more of the member's military service than the member has service credit in excess of 15 years.

(2) If a member has retired from active duty in the armed forces of the United States with a normal military service retirement benefit, the member may not qualify the member's military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active duty military service under subsection (1) if the member's active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time.

History: En. 11-1842.1 by Sec. 1, Ch. 368, L. 1977; R.C.M. 1947, 11-1842.1; amd. Sec. 2, Ch. 178, L. 1991; amd. Sec. 193, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in first sentence near beginning after "service", inserted "credit", substituted "qualify up to a maximum of 5 years of the member's active duty service" for "qualify all or any portion of his active service", and after "calculating retirement benefits" deleted "up to a maximum of 5 years", in second sentence substituted "pension trust fund" for "account" and after "based on" substituted "the most recent actuarial valuation of the system" for "his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes", and in third sentence, after "service", inserted "credit"; in (2), in first sentence, substituted "a normal military service retirement benefit" for "normal service retirement benefits" and in second sentence, after first "active", inserted "duty"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-404. Service under sheriffs' retirement system prior to or following city-county consolidation. A law enforcement officer who has combined service in the municipal police officers' retirement system and the sheriffs' retirement system because of a city-county consolidation, as provided in 19-7-801, is eligible for benefits as provided in 19-7-801.

History: En. Sec. 2, Ch. 122, L. 1979.

19-9-405. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or game wardens' retirement system for which the member has received a refund of the member's accumulated contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the municipal police officers' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the municipal police officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the regular contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the municipal police officers' retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the regular contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19.

History: **En. Sec. 5, Ch. 145, L. 1981; amd. Sec. 5, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 194, Ch. 265, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 265 in (1)(a), in first sentence, substituted "service credit" for "creditable service" and near end substituted "accumulated contributions" for "membership contributions" and in second sentence substituted "pension trust fund" for "retirement fund" and after "based on" deleted "his compensation earned as a member of the former system and the normal contribution rate according to"; in (1)(b), near beginning, substituted "division" for "administrator" and near middle substituted "regular contribution rate" for "normal contribution rate"; in (2)(a), in third sentence, substituted "board shall" for "board may", substituted "subject to rules adopted by the board" for "subject to the provisions of 19-9-201", and near end substituted "regular contribution rate" for "normal contribution rate"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-406 through 19-9-409 reserved.

19-9-410. Transfer to public employees' retirement system. When an injured nonvested member accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under the public employees' retirement system, all service and contributions previously credited with the municipal police officers' retirement system must be transferred from the municipal police officers' retirement system pension trust fund along with the interest to the public employees' retirement system pension trust fund. The employer contributions and interest transferred must be equal to the amount that would have been contributed if the transferred service had been normal employment covered under the public employees' retirement system.

History: **En. Sec. 195, Ch. 265, L. 1993.**

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 5

Financial Management (Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

19-9-501. Repealed. Sec. 236, Ch. 265, L. 1993.

19-9-502. Repealed. Sec. 236, Ch. 265, L. 1993.

19-9-503. Renumbered 19-9-208 by Code Commissioner, 1993.

19-9-504. Repealed. Sec. 236, Ch. 265, L. 1993.

19-9-505. Repealed. Sec. 236, Ch. 265, L. 1993.

Histories of Repealed Sections:

19-9-501. En. 11-1879 by Sec. 20, Ch. 456, L. 1977; R.C.M. 1947, 11-1879; amd. Sec. 17, Ch. 282, L. 1983.

19-9-502. En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(4).

19-9-504. En. 11-1882 by Sec. 23, Ch. 456, L. 1977; R.C.M. 1947, 11-1882.

19-9-505. En. 11-1888 by Sec. 29, Ch. 456, L. 1977; R.C.M. 1947, 11-1888.

Part 6

Employee Contributions (Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

19-9-601. Renumbered 19-9-710 by Code Commissioner, 1993.

19-9-602. Repealed. Sec. 236, Ch. 265, L. 1993.

19-9-603. Repealed. Sec. 236, Ch. 265, L. 1993.

19-9-604. Repealed. Sec. 236, Ch. 265, L. 1993.

Histories of Repealed Sections:

19-9-602. En. 11-1867 by Sec. 8, Ch. 456, L. 1977; R.C.M. 1947, 11-1867(2).

19-9-603. En. 11-1868 by Sec. 9, Ch. 456, L. 1977; R.C.M. 1947, 11-1868; amd. Sec. 4, Ch. 103, L. 1987.

19-9-604. En. Sec. 1, Ch. 13, L. 1987.

Part 7

Contributions

19-9-701. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(1).

19-9-702. State contribution. The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies. The payments must be made annually after the end of each fiscal year but no later than November 1 from the gross premium tax after deduction for cancellations and returned premiums. The division shall notify the auditor by September 1 of each fiscal year of the annual compensation paid to all active members during the preceding fiscal year. The state's contribution is 15.66% of compensation paid to members.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(2); amd. Sec. 4, Ch. 375, L. 1979; amd. Sec. 1, Ch. 250, L. 1981; amd. Sec. 21, Ch. 549, L. 1981; amd. Sec. 2, Ch. 661, L. 1983; amd. Sec. 20, Ch. 703, L. 1985; amd. Sec. 3, Ch. 631, L. 1991; amd. Sec. 188, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence, after "insurance policies", deleted "which premium tax is statutorily appropriated, as provided in 17-7-502, for the contributions"; in second sentence substituted "November 1" for "September 1"; in third sentence substituted "division" for "administrator", substituted "September 1" for "April 1", and in two places, before "year", inserted "fiscal"; in fourth sentence, after "state's contribution is", substituted "15.66% of compensation paid to members" for former text that read: "(1) 14.04% of compensation paid to members before July 1, 1985;

(2) 15.06% of compensation paid to members from July 1, 1985, through June 30, 1991; and

(3) 15.66% of compensation paid to members after July 1, 1991"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-703. Employer contribution. Each employer shall make its contribution through the city treasurer or other appropriate official out of money available to the city for that purpose. The employer's contribution, which must be paid monthly to the division, is 14.36% of the compensation paid to all active members.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(3); amd. Sec. 5, Ch. 375, L. 1979; amd. Sec. 22, Ch. 549, L. 1981; amd. Sec. 3, Ch. 661, L. 1983; amd. Sec. 4, Ch. 631, L. 1991; amd. Sec. 189, Ch. 265, L. 1993; amd. Secs. 2, 5, Ch. 620, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 265 in first sentence, after "contribution", deleted "on behalf of members"; substituted second sentence regarding employer's contribution rate for former text that read: "The employer's contribution, which must be paid monthly to the administrator, is:

(1) 14.04% of the total monthly compensation paid to all active members during the preceding month before July 1, 1985;

(2) 13.02% of the total monthly compensation paid to all active members during the preceding month from July 1, 1985, through June 30, 1991; and

(3) 13.92% of the total monthly compensation paid to all active members during the preceding month after July 1, 1991"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 620 pursuant to sec. 5, a coordination instruction, deleted (1) and (2) that read: "(1) 14.04% of the total monthly compensation paid to all active members during the preceding month before July 1, 1985;

(2) 13.02% of the total monthly compensation paid to all active members during the preceding month from July 1, 1985, through June 30, 1991"; increased employer contribution from 13.92% to 14.36% and at end, after "July 1", changed 1991 to 1993; and made minor changes in style. Amendment effective May 7, 1993.

19-9-704. Renumbered 19-9-209 by Code Commissioner, 1993.

19-9-705. Other money credited as employer contributions. All gifts, bequests, or emoluments given to an employer or member for the benefit of the retirement system or because of any member's service as a police officer, except when specifically allowed to be retained by the member by the member's employer, and all money withheld from the compensation of a member for violation of the rules of the member's employer must be paid to the pension trust fund. The amounts are employer contributions but are in addition to the amounts required by 19-9-703.

History: En. 11-1869 by Sec. 10, Ch. 456, L. 1977; R.C.M. 1947, 11-1869; amd. Sec. 190, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence substituted "retirement system" for "plan", before "compensation" deleted "monthly", and at end substituted "pension trust fund" for "administrator"; deleted second sentence that read: "The administrator shall credit them to the fund and, as soon as practicable after their receipt, deposit them with the state treasurer"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-706. Contributions based on total compensation when member receives disability compensation. When a member receives compensation from both the member's employer and as benefits from the workers' compensation program under the provisions of 7-32-4132, the member's compensation reported by the employer is the same as if the member was in active service, and the member, employer, and state retirement contributions required by this chapter must be calculated and paid on that total compensation. The service represented by these contributions must be credited in the same manner as provided in 19-9-401.

History: En. Sec. 4, Ch. 290, L. 1979; amd. Sec. 18, Ch. 282, L. 1983; amd. Sec. 191, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present text regarding contributions based on total compensation when member receives disability compensation for former section that read: "(1) When an officer receives compensation under 7-32-4132, the member contributions for retirement required under 19-9-601 will be paid on the total compensation received under 7-32-4132 and the employer contribution paid by the municipalities under 19-9-703 and the state contribution under 19-9-702 shall include as part of the salaries paid to police officers all compensation received under 7-32-4132. The service represented by these contributions will be credited in the same manner as provided in 19-9-401.

(2) When an injured officer accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under 19-3-401, all service and contributions previously credited with the municipal police officers' retirement system shall be transferred from the municipal police officers'

retirement system pension trust fund along with the interest to the public employees' retirement system pension trust fund. The employer contributions and interest transferred will be equal to the amount that would have been contributed had the transferred service been normal employment covered under the public employees' retirement system." Amendment effective July 1, 1993.

19-9-707. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 138, L. 1991.

19-9-708 and 19-9-709 reserved.

19-9-710. Member contributions. (1) The regular contribution of each active member first employed by an employer on or before June 30, 1975, is 7.8% of the member's compensation. In the case of a member first employed by an employer as a police officer after June 30, 1975, the contribution is 9% of the member's compensation. In the case of a member first employed by an employer as a police officer after June 30, 1979, the contribution is 10.5% of the member's compensation.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and in the member's compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. 11-1867 by Sec. 8, Ch. 456, L. 1977; R.C.M. 1947, 11-1867(1); amd. Sec. 3, Ch. 375, L. 1979; amd. Sec. 16, Ch. 464, L. 1985; amd. Sec. 2, Ch. 631, L. 1991; amd. Sec. 187, Ch. 265, L. 1993; amd. Sec. 1, Ch. 522, L. 1993; amd. Secs. 1, 5, Ch. 620, L. 1993; Sec. 19-9-601, MCA 1991; redes. 19-9-710 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendments: Chapter 265 in (1), in three places before "compensation", deleted "monthly", near beginning substituted "regular contribution" for "normal contribution", after "active member" inserted "first employed by an employer on or before June 30, 1975", and deleted last sentence that read: "Compensation excludes overtime payments, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for his services as a police officer"; in first sentence of (4), before "compensation as defined in 19-9-104", deleted "monthly"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 522 in (1) increased normal contribution rate from 6% to 7.36%, for member employed after June 30, 1975, from 7.2% to 8.56%, and for member employed after June 30, 1979, from 8.7% to 10.06%; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 620 pursuant to sec. 5, a coordination instruction, in (1) increased normal contribution rate from 6% to 7.8%, for police officers employed after June 30, 1975, from 7.2% to 9%, and for police officers employed after June 30, 1979, from 8.7% to 10.5%; and made minor changes in style. Amendment effective May 7, 1993.

Part 8
Service Retirement Benefits

19-9-801. Eligibility for service retirement — commencement of benefit. (1) Members are eligible for retirement as provided in this section.

(2) A member is eligible to receive a service retirement benefit when the member has completed 20 years or more of membership service and has terminated service.

(3) A member who terminates service after completing at least 10 years of membership service but prior to completing 20 years of membership service is eligible to receive a service retirement benefit when the member has reached 50 years of age.

(4) (a) Except as provided in subsection (4)(b), the retirement benefit may commence on the first day of the month following the member's minimum retirement date or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 55th birthday.

History: En. 11-1889 by Sec. 30, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(part); amd. Sec. 6, Ch. 53, L. 1983; amd. Sec. 5, Ch. 86, L. 1985; amd. Sec. 15, Ch. 196, L. 1989; amd. Sec. 3, Ch. 178, L. 1991; amd. Sec. 5, Ch. 631, L. 1991; amd. Secs. 2, 9, Ch. 822, L. 1991; amd. Sec. 196, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), after "retirement", deleted "and shall retire"; in (2), after "A member", deleted "employed by an employer as a police officer", after "retirement" substituted "benefit" for "allowance", substituted "membership service" for "qualified service", and at end, after "terminated", substituted "service" for "covered employment"; in (3), after "terminates", substituted "service" for "employment as a police officer with an employer", in two places substituted "membership service" for "qualified service", and substituted "retirement benefit" for "retirement allowance"; in (4)(a) substituted reference to subsection (4)(b) for reference to subsection (3)(b), substituted "retirement benefit" for "retirement allowance", and substituted "inactive member" for "terminated member"; in (4)(b) substituted "retirement benefit" for "retirement allowance" and substituted "inactive member" for "terminated member"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-802. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1889, 11-1890 by Secs. 30, 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(2), 11-1890(part); amd. Sec. 6, Ch. 86, L. 1985; amd. Sec. 6, Ch. 631, L. 1991; amd. Secs. 3, 9, Ch. 822, L. 1991.

19-9-803. Repealed. Sec. 13, Ch. 86, L. 1985.

History: En. 11-1870 by Sec. 11, Ch. 456, L. 1977; R.C.M. 1947, 11-1870.

19-9-804. Amount of service retirement benefit — continuation of benefit after death of member. (1) A member who is eligible for service retirement must receive a retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) (a) Upon the death of a member receiving a service retirement benefit, the member's surviving spouse, if there is one, must receive a benefit equal to the amount of the member's benefit at the time of the member's death.

(b) If the member leaves one or more dependent children, then upon the member's death, if there is no surviving spouse, or upon the death of the surviving spouse, the member's surviving dependent child or children collectively if there are more than one must receive the same monthly payments that a surviving spouse would receive for as long as the child or one of the children remains a dependent child as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child must cease and be made to the remaining children until all the children are no longer dependent.

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(part); amd. Sec. 7, Ch. 86, L. 1985; amd. Sec. 2, Ch. 350, L. 1985; amd. Sec. 2, Ch. 63, L. 1989; amd. Sec. 16, Ch. 196, L. 1989; amd. Sec. 7, Ch. 631, L. 1991; amd. Secs. 4, 9, Ch. 822, L. 1991; amd. Sec. 197, Ch. 265, L. 1993; amd. Sec. 2, Ch. 522, L. 1993; amd. Sec. 3, Ch. 620, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 265 substituted (1) that read: "(1) A member with at least 20 years of membership service must receive a retirement benefit equal to the sum of:

(a) 2.5% of the member's final average compensation for each year of service credit up to and including 20 years; and

(b) 1% of the member's final average compensation for each year of service credit after 20 years" (not codified — see compiler's comment) for former (1) through (3) that read: "(1) A police officer with 20 years of qualified service who is eligible under 19-9-801 and does not elect to serve any additional years as an active police officer shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement under 19-9-801 after 20 years of qualified service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of his final average salary for each year of additional qualified service, up to a maximum of 60% of his final average salary.

(3) A member who is eligible for service retirement under 19-9-801 with less than 20 years of qualified service shall receive a retirement allowance equal to 2.5% of his final average salary for each year of qualified service"; inserted (2) regarding limitation on total monthly benefit (not codified — see compiler's comment); inserted (3) regarding amount of retirement benefit for member retiring with less than 20 years of membership service (not codified — see compiler's comment); in (2), throughout subsection, substituted references to member for references to police officer or officer; in (2)(a) substituted "retirement benefit under subsection (1)" for "retirement allowance under subsection (1) or (2)", before "fund" inserted "pension trust", substituted "a benefit equal to" for "a sum equal to", and at end substituted "final average compensation" for "final average salary"; in (2)(b) substituted "service retirement benefit" for "service retirement allowance", before "fund" inserted "pension trust", substituted "a benefit equal to" for "a sum equal to", and substituted "benefit" for "allowance"; in (4)(c), near end of first sentence after "dependent", inserted "child" (not codified — see compiler's comment); and made minor changes in style. Amendment effective July 1, 1993.

Chapter 522 deleted former (1) providing for 20-year service retirement (see 1993 Session Law for text); deleted former (2) providing for 20-year service retirement and additional qualified service retirement (see 1993 Session Law for text); in (1), after "under 19-9-801", deleted "with less than 20 years of qualified service"; in (4)(a), after "benefit", inserted "based on at least 20 years of service" and in (2)(b), after "allowance", inserted "based on less than 20 years of service" ((4) amendments rendered meaningless by deletion of sentence by Ch. 265); and made minor changes in style. Amendment effective July 1, 1993.

Chapter 620 in (2)(a), after "(2)", inserted "or (3)" (this amendment was not codified by the codifier due to Ch. 265 amendments) and after "equal to" deleted former language that read: "one-half of the officer's final average salary.

(b) Upon the death of a member receiving a service retirement allowance under subsection (3), his surviving spouse, if there is one, shall receive from the fund a sum equal to"; and made minor changes in style. Amendment effective May 7, 1993.

Compiler's Comment: Chapter 265 contained an introductory phrase that read: "(1) A member with at least 20 years of membership service must receive a retirement benefit equal to the sum of".

Chapter 522 contained an introductory phrase that read: "(1) A member who is eligible for service retirement under 19-9-801 must receive a retirement allowance equal to . . . ."

Because both chapters struck the introductory language of the other, thereby rendering the introductory phrase meaningless, the compiler has combined the language into the current introductory phrase to reflect the apparent intent of both chapters.

The insertion of (1)(a) and (1)(b) by Ch. 265 was parallel to former (2). The provision in (1)(b) concerning 1% for years of service in excess of 20 was not codified because that provision was deleted by Ch. 522. Chapter 265 apparently did not intend to make a substantive change in benefits. The compiler has not codified the inserted benefit language from Ch. 265 because that concept was deleted by Ch. 522.

The compiler has codified the apparent intent of the three chapters.

Style and gender neutral changes throughout the section were slightly different in the three chapters. In each case, the codifier chose the most appropriate of the three.

Retroactive Applicability: Section 6, Ch. 620, L. 1993, provided: "[Section 3] [19-9-804] applies retroactively, within the meaning of 1-2-109, to benefits paid on or after July 1, 1975."

Part 9
Disability Retirement Benefits

19-9-901. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(3); amd. Sec. 9, Ch. 597, L. 1981.

19-9-902. Eligibility for disability retirement. If a member is determined by the board to be disabled, the member is entitled to a disability retirement benefit, regardless of the length of the member's service, commencing on the day following the member's termination from service.

History: En. 11-1871 by Sec. 12, Ch. 456, L. 1977; R.C.M. 1947, 11-1871; amd. Sec. 1, Ch. 389, L. 1979; amd. Sec. 5, Ch. 822, L. 1991; amd. Sec. 198, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 near beginning substituted "member" for "police officer", before "disabled" deleted "totally and permanently", substituted "disability retirement benefit" for "disability retirement allowance", and at end substituted "the member's termination from service" for "the police officer's last day of membership service"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-903. Amount of disability retirement benefit — continuation of benefit after death of member. (1) A member who is eligible under 19-9-902 before earning 20 years of service credit must receive a disability retirement benefit equal to one-half the member's final average compensation.

(2) A member who is retired under 19-9-902 and who, at the time of the member's injury or disability, was eligible at the member's option to be retired under 19-9-801 but had elected to serve years in excess of 20 years of service credit and was then serving additional years must be paid for the additional years at the rate prescribed in 19-9-804.

(3) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for benefits as provided in 19-9-804.

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(4), (5); amd. Sec. 3, Ch. 350, L. 1985; amd. Sec. 8, Ch. 631, L. 1991; amd. Secs. 6, 9, Ch. 822, L. 1991; amd. Sec. 199, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to member for references to police officer; in (1) substituted "before earning 20 years of service credit" for "before completing 20 years of qualified service", substituted "disability retirement benefit" for "disability retirement allowance", and at end substituted "one-half the member's final average compensation" for "one-half his average final salary"; in (2) substituted "20 years of service credit" for "20 years of qualified service"; in (3) substituted "disability retirement benefit" for "disability allowance" and deleted reference to subsection (4) of 19-9-804; and made minor changes in style. Amendment effective July 1, 1993.

19-9-904. Termination of benefit. The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by the recipient when the recipient was retired. If an inactive member is determined by the board to be no longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive member is offered a position under 19-9-905. If the inactive member refuses to submit to a medical examination, the inactive member's disability retirement benefit must cease as of the date of the determination. The inactive member must be notified of the determination by the board. The board may review the status of an inactive member at any time.

History: En. 11-1872 by Sec. 13, Ch. 456, L. 1977; R.C.M. 1947, 11-1872(1); amd. Sec. 10, Ch. 597, L. 1981; amd. Sec. 200, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in three places substituted "disability retirement benefit" for "disability retirement allowance" and in fourth sentence, before "disabled", deleted "totally and permanently"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-905. Reinstatement upon termination of benefit. (1) A retired member whose disability retirement benefit is cancelled as provided in 19-9-904 must be reinstated to the position held by the member immediately before retirement or to a position in the same classification with duties within the member's capacity, whichever is first open. The board shall advise the employer that the disability retirement benefit has been cancelled and that the member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the member may have or claim to have.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a police officer. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the retired member again becomes an active member by returning to service with an employer within 30 days following receipt of notice under 19-9-904, the member must be considered to have been continuously employed during the term of the member's disability. If the retired member fails to become an active member by returning to service with an employer within 30 days following receipt of the notice, the member's termination of service is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement date must be determined accordingly.

History: En. 11-1872 by Sec. 13, Ch. 456, L. 1977; R.C.M. 1947, 11-1872(2), (3); amd. Sec. 11, Ch. 597, L. 1981; amd. Sec. 201, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in two places, substituted "disability retirement benefit" for "disability retirement allowance", in two places, before "member", deleted "inactive", and at beginning substituted "A retired member" for "Any inactive member"; in (3), in two places, substituted "retired member" for "inactive member", in two places, after "returning to", substituted "service with" for "active work for", and in second sentence substituted "termination of service" for "termination of employment", substituted "retirement benefit" for "retirement allowance", and near end, after "service retirement", inserted "date"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-906 through 19-9-910 reserved.

19-9-911. Renumbered 19-9-1101 by Code Commissioner, 1993.

19-9-912. Renumbered 19-9-1102 by Code Commissioner, 1993.

Part 10

Minimum Benefits and Benefit Increases

19-9-1001. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(part).

19-9-1002. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1874 by Sec. 15, Ch. 456, L. 1977; R.C.M. 1947, 11-1874.

19-9-1003. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1886 by Sec. 27, Ch. 456, L. 1977; R.C.M. 1947, 11-1886(2).

19-9-1004. Renumbered 19-2-906. Sec. 238, Ch. 265, L. 1993.

19-9-1005. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1876 by Sec. 17, Ch. 456, L. 1977; R.C.M. 1947, 11-1876; amd. Sec. 17, Ch. 464, L. 1985; amd. Sec. 12, Ch. 823, L. 1991.

19-9-1006. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1877 by Sec. 18, Ch. 456, L. 1977; R.C.M. 1947, 11-1877; amd. Sec. 12, Ch. 114, L. 1979.

19-9-1007. Supplement to certain benefits. (1) The benefits paid in each fiscal year to a retired member or the member's survivors may not be less than one-half of the compensation that will be paid in the current fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before October 1 of each year, the division shall make a report including the following information:

(a) the names of all retired members who are receiving benefits from the retirement system as of the date of the report;

(b) the names of all surviving spouses or dependent children who are receiving benefits from the retirement system because of the death of an active or retired member of this or a prior plan;

(c) for the purpose of determining the base retirement, disability, or survivorship benefits for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the benefits paid in the base fiscal year to each retired member described in subsection (2)(a);

(ii) the amount of the benefits paid in the base fiscal year to each surviving spouse or dependent child described in subsection (2)(b);

(iii) upon the death after the base fiscal year of any retired member who was receiving benefits, the amount of benefits that would have been paid to an eligible surviving spouse of the retired member if the surviving spouse had been receiving benefits in the base fiscal year;

(d) the original amount of retirement, disability, or survivorship benefits paid to retired members or their eligible survivors as of the original retirement dates after July 1, 1975;

(e) the compensation that will be paid during the current fiscal year to a newly confirmed police officer of each city or town participating in the retirement system.

(3) The division shall compute the difference between each amount reported under subsections (2)(c) through (2)(e) and one-half the compensation to be paid during the current fiscal year to a newly confirmed police officer of the appropriate city or town. The difference must be reported to the state auditor who shall pay the difference to the pension trust fund out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-18-512(3) no later than November 1. If the compensation of a newly confirmed police officer has not been set for the current fiscal year in time to be included in the October 1 report to the state auditor, the division shall make any retroactive adjustments necessary to individual supplemental benefits after the current compensation has been determined and shall include these amounts in the next year's report for reimbursement at that time.

(4) The premium tax amount paid by the state auditor is statutorily appropriated, as provided in 17-7-502, for the payment of supplemental retirement benefits to eligible retired members and their survivors. This payment is in addition to the payment to be made by the state auditor under 19-9-702.

(5) If more than one dependent child is entitled to supplementary benefits under this section by virtue of the death of a common parent, the minimum benefit paid to the dependent children under this section must be determined as if there were one dependent child and the supplementary benefits must be paid to the dependent children collectively.

History: En. 11-1846.1 by Sec. 2, Ch. 406, L. 1977; R.C.M. 1947, 11-1846.1(part); amd. Sec. 13, Ch. 114, L. 1979; amd. Sec. 2, Ch. 457, L. 1979; amd. Sec. 2, Ch. 250, L. 1981; amd. Sec. 53, Ch. 566, L. 1981; amd. Sec. 71, Ch. 575, L. 1981; amd. Sec. 4, Ch. 186, L. 1983; amd. Sec. 21, Ch. 703, L. 1985; amd. Sec. 1, Ch. 633, L. 1991; amd. Sec. 204, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to benefits for references to payments; in (1) substituted present text regarding minimum benefits for former subsection that read: "(1) The payment for each fiscal year to the police officers, surviving spouses, or dependent children described in subsections (2)(a) through (2)(c) may be not less than one-half of the base salary paid in the current fiscal year in the appropriate city or town to newly confirmed police officers, except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase"; in (2) substituted "October 1" for "August 1" and substituted "division" for "department of administration"; in (2)(a) substituted "retired members" for "police officers", substituted "retirement system" for "plan", and after "report" deleted "and were receiving payments from a prior plan before July 1, 1975"; in (2)(b) substituted "retirement system" for "plan" and substituted "death of an active or retired member of this or a prior plan" for "death of a police officer who was receiving payments from a prior plan before July 1, 1975"; deleted former (2)(c) that read: "(c) the names of all surviving spouses or dependent children who are receiving payments from the plan and who were receiving payments from a prior plan before July 1, 1975, or in the case of dependent children, whose parent, the spouse of a police officer, was receiving payments from a prior plan before July 1, 1975"; in (2)(c) substituted "base retirement, disability, or survivorship benefits" for "base figure"; in (2)(c)(i) substituted "retired member" for "police officer"; in (2)(c)(ii), after "dependent child", deleted "(or children)" and after "subsection (2)(b)" deleted "or (2)(c)"; in (2)(c)(iii) substituted present text regarding death after base fiscal year of retired member for former subsection that read: "(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from a prior plan before July 1, 1975, his surviving spouse or dependent children are entitled to receive payments from the plan, the amount which would have been paid to an eligible surviving spouse of such police officer had that spouse been receiving payments in the base fiscal year"; inserted (2)(d) regarding original amount of benefits; in (2)(e) substituted "compensation that will be paid during" for "base salary for" and substituted "retirement system" for "plan"; in (3), in first sentence, substituted "division" for "department of administration", substituted reference to subsections (2)(c) through (2)(e) for reference to subsections (2)(d)(i) through (2)(d)(iii), and substituted "one-half the compensation to be paid during" for "one-half the base salary for", in second sentence, after "reported to", deleted "and paid by", after "state auditor" inserted "who shall pay the difference to the pension trust fund", and substituted "no later than November 1" for "to the administrator no later than September 1", and in third sentence, near beginning, substituted "compensation" for "base salary", substituted "October 1" for "August 1", substituted "division" for "department", and substituted "current compensation" for "base salary"; in (4), in first sentence after "17-7-502", inserted "for the payment of supplemental retirement benefits to eligible retired members and their survivors" and deleted last sentence that read: "The administrator shall use the funds received under this subsection to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met"; deleted former (4) that read: "(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 after the end of each fiscal year but no later than September 1, until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. These payments are statutorily appropriated as provided in 17-7-502. These payments are to be made to reimburse the retirement account for funds advanced to implement this section"; in (5), after "common parent", deleted "police officer"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-1008. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 14, Ch. 114, L. 1979.

19-9-1009 and 19-9-1010 reserved.

19-9-1011. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 710, L. 1985; amd. Sec. 1, Ch. 93, L. 1987; amd. Sec. 1, Ch. 282, L. 1989; amd. Sec. 8, Ch. 822, L. 1991.

19-9-1012. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 14, L. 1987.

Part 11

Survivorship Benefits and Death Payments

19-9-1101. Preretirement death benefits. (1) Upon the death of a member before retirement, the member's surviving spouse or dependent child is eligible for benefits equal to one-half of the member's final average salary as provided in 19-9-804.

(2) Upon the death of an inactive nonvested member, the member's surviving spouse or dependent child is eligible for a refund of the member's accumulated contributions.

History: En. 11-1875 by Sec. 16, Ch. 456, L. 1977; R.C.M. 1947, 11-1875; amd. Sec. 3, Ch. 186, L. 1983; amd. Sec. 4, Ch. 350, L. 1985; amd. Sec. 7, Ch. 822, L. 1991; amd. Sec. 202, Ch. 265, L. 1993; amd. Sec. 4, Ch. 620, L. 1993; Sec. 19-9-911, MCA 1991; redes. 19-9-1101 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 265 in (1) substituted "member" for "police officer" and deleted reference to subsection (4) of 19-9-804; in (2) substituted present text regarding refund upon death of inactive nonvested member for former subsection that read: "Upon the death of a member who is no longer employed as a police officer and who did not attain the minimum retirement eligibility at the age of 50, his surviving spouse or dependent child is eligible for a refund of the member's contributions and accumulated interest on account with the retirement system on the date that the refund is made to the survivors"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 620 in (1), after "benefits", inserted "equal to one-half of the member's final average salary as" and after "19-9-804(4)" inserted "(b)" (subsection reference deleted by ch. 265); and made minor changes in style. Amendment effective May 7, 1993.

19-9-1102. Payments in absence of spouse or child. If a member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the division, the designated beneficiary must be paid an amount equal to the member's accumulated contributions less any retirement benefits paid to the member before the member's death. If the member did not designate a beneficiary or the designated beneficiary predeceased the member, this amount must be paid to the member's estate.

History: En. Sec. 2, Ch. 186, L. 1983; amd. Sec. 203, Ch. 265, L. 1993; Sec. 19-9-912, MCA 1991; redes. 19-9-1102 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence substituted "division" for "administrator", substituted "the designated beneficiary must be paid" for "the administrator shall pay to the designated beneficiary", and substituted "member's accumulated contributions" for "member's contributions"; in second sentence, near beginning before "member", deleted "deceased" and before "beneficiary" inserted "designated"; and made minor changes in style. Amendment effective July 1, 1993.

CHAPTER 10

POLICE RETIREMENT — LOCAL FUNDS

(Renumbered by Code Commissioner, 1993)

Chapter Compiler's Comments

Sections Renumbered:

19-10-101. Renumbered 19-19-101.
19-10-201. Renumbered 19-19-201.
19-10-202. Renumbered 19-19-202.
19-10-203. Renumbered 19-19-203.
19-10-204. Renumbered 19-19-204.
19-10-205. Renumbered 19-19-205.
19-10-301. Renumbered 19-19-301.
19-10-302. Renumbered 19-19-302.
19-10-303. Renumbered 19-19-303.
19-10-304. Renumbered 19-19-304.
19-10-305. Renumbered 19-19-305.
19-10-401. Renumbered 19-19-401.
19-10-402. Renumbered 19-19-402.
19-10-403. Renumbered 19-19-403.
19-10-404. Renumbered 19-19-404.
19-10-405. Renumbered 19-19-405.
19-10-406. Renumbered 19-19-406.
19-10-501. Renumbered 19-19-501.
19-10-502. Renumbered 19-19-502.
19-10-503. Renumbered 19-19-503.
19-10-504. Renumbered 19-19-504.
19-10-505. Renumbered 19-19-505.
19-10-506. Renumbered 19-19-506.

CHAPTER 11

FIREFIGHTERS' RETIREMENT

(Renumbered and Repealed)

Chapter Compiler's Comments

Sections Renumbered and Repealed:

19-11-101. Renumbered 19-18-101 by Code Commissioner, 1993.

19-11-102. Renumbered 19-18-102 by Code Commissioner, 1993.

19-11-103. Renumbered 19-18-103 by Code Commissioner, 1993.

19-11-104. Renumbered 19-18-104 by Code Commissioner, 1993.

19-11-105. Renumbered 19-18-105 by Code Commissioner, 1993.

19-11-106. Renumbered 19-18-106 by Code Commissioner, 1993.

19-11-107. Renumbered 19-18-107 by Code Commissioner, 1993.

19-11-201. Renumbered 19-18-201 by Code Commissioner, 1993.

19-11-202. Renumbered 19-18-202 by Code Commissioner, 1993.

19-11-203. Renumbered 19-18-203 by Code Commissioner, 1993.

19-11-204. Renumbered 19-18-204 by Code Commissioner, 1993.

19-11-205. Renumbered 19-18-205 by Code Commissioner, 1993.

19-11-206. Renumbered 19-18-206 by Code Commissioner, 1993.

19-11-207. Renumbered 19-18-207 by Code Commissioner, 1993.

19-11-208. Renumbered 19-18-208 by Code Commissioner, 1993.

19-11-301. Repealed. Sec. 62, Ch. 566, L. 1981.

19-11-302. Repealed. Sec. 62, Ch. 566, L. 1981.

19-11-303. Repealed. Sec. 62, Ch. 566, L. 1981.

19-11-401. Renumbered 19-18-401 by Code Commissioner, 1993.

19-11-402. Renumbered 19-18-402 by Code Commissioner, 1993.

19-11-403. Renumbered 19-18-403 by Code Commissioner, 1993.

19-11-501. Renumbered 19-18-501 by Code Commissioner, 1993.

19-11-502. Renumbered 19-18-502 by Code Commissioner, 1993.

19-11-503. Renumbered 19-18-503 by Code Commissioner, 1993.

19-11-504. Renumbered 19-18-504 by Code Commissioner, 1993.

19-11-505 through 19-11-510 reserved.

19-11-511. Renumbered 19-18-511 by Code Commissioner, 1993.

19-11-512. Renumbered 19-18-512 by Code Commissioner, 1993.

19-11-513. Renumbered 19-18-513 by Code Commissioner, 1993.

19-11-514. Renumbered 19-18-514 by Code Commissioner, 1993.

19-11-601. Renumbered 19-18-601 by Code Commissioner, 1993.

19-11-602. Renumbered 19-18-602 by Code Commissioner, 1993.

19-11-603. Renumbered 19-18-603 by Code Commissioner, 1993.

19-11-604. Renumbered 19-18-604 by Code Commissioner, 1993.

19-11-605. Renumbered 19-18-605 by Code Commissioner, 1993.

19-11-606. Renumbered 19-18-606 by Code Commissioner, 1993.

19-11-607. Renumbered 19-18-607 by Code Commissioner, 1993.

19-11-608 through 19-11-610 reserved.

19-11-611. Renumbered 19-18-611 by Code Commissioner, 1993.

19-11-612. Renumbered 19-18-612 by Code Commissioner, 1993.

Histories of Repealed Sections:

19-11-301. En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(a); amd. Sec. 1, Ch. 270, L. 1981.

19-11-302. En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(c).

19-11-303. En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975;

amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(b); amd. Sec. 7, Ch. 274, L. 1981.

CHAPTER 12

VOLUNTEER FIREFIGHTERS' COMPENSATION ACT

(Renumbered by Code Commissioner, 1993)

Chapter Compiler's Comments

Sections Renumbered:

19-12-101. Renumbered 19-17-101.
19-12-102. Renumbered 19-17-102.
19-12-103. Renumbered 19-17-103.
19-12-104. Renumbered 19-17-104.
19-12-105. Renumbered 19-17-105.
19-12-201. Renumbered 19-17-201.
19-12-202. Renumbered 19-17-202.
19-12-203. Renumbered 19-17-203.
19-12-204. Renumbered 19-17-204.
19-12-301. Renumbered 19-17-301.
19-12-302. Renumbered 19-17-302.
19-12-401. Renumbered 19-17-401.
19-12-402. Renumbered 19-17-402.
19-12-403. Renumbered 19-17-403.
19-12-404. Renumbered 19-17-404.
19-12-405. Renumbered 19-17-405.
19-12-406. Renumbered 19-17-406.
19-12-407. Renumbered 19-17-407.
19-12-408. Renumbered 19-17-408.
19-12-409. Renumbered 19-17-409.
19-12-501. Renumbered 19-17-501.
19-12-502. Renumbered 19-17-502.
19-12-503. Renumbered 19-17-503.
19-12-504. Renumbered 19-17-504.
19-12-505. Renumbered 19-17-505.
19-12-506. Renumbered 19-17-506.

CHAPTER 13

FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM

Part 1 — General Provisions

19-13-101. Short title.
19-13-102. Purpose — application of prior law.
19-13-103. Firefighters' unified retirement system established.
19-13-104. Definitions.
19-13-105. Renumbered 19-13-210 by Code Commissioner, 1993.
19-13-106. Repealed.
19-13-107. Renumbered 19-13-310 by Code Commissioner, 1993.
19-13-108. Renumbered 19-13-211 by Code Commissioner, 1993.
19-13-109. Repealed.
19-13-110. Renumbered 19-13-212 by Code Commissioner, 1993.
19-13-111 through 19-13-114 reserved.
19-13-115. Firemen's association to advise board.

Part 2 — Extension of Coverage by Local Government Employers

19-13-201. Renumbered 19-13-115 by Code Commissioner, 1993.
19-13-202. Repealed.
19-13-203. Repealed.
19-13-204. Repealed.
19-13-205. Terminated.
19-13-206 through 19-13-209 reserved.
19-13-210. Participation in retirement system by first- and second-class cities.
19-13-211. Election to join retirement system — transfer of assets.
19-13-212. Termination of participation in retirement system or reduction of employer contributions.
19-13-213. Excess unfunded liabilities of prior plans.
19-13-214. Taxing authority of employers.

Part 3 — Eligibility, Membership, and Vesting

19-13-301. Active membership — inactive vested member — inactive nonvested member.
19-13-302. Ineligibility for other retirement plans.
19-13-303. Repealed.
19-13-304. Repealed.
19-13-305. Repealed.
19-13-306 through 19-13-309 reserved.
19-13-310. Effect on members of prior plans.

Part 4 — Service Credit

19-13-401. Repealed.
19-13-402. Repealed.
19-13-403. Election to qualify previous military service.
19-13-404. Qualification of other Montana public service.

Part 5 — Retirement Account—Creation and Management (Renumbered and Repealed)

Part 6 — Contributions and Refunds

19-13-601. Deduction remitted to firemen's association — member's contributions.
19-13-602. Repealed.
19-13-603. Repealed.
19-13-604. State contribution.
19-13-605. Employer contribution.
19-13-606. Renumbered 19-13-214 by Code Commissioner, 1993.
19-13-607. Other money credited as employer contributions.
19-13-608. Repealed.
19-13-609. Repealed.
19-13-610 through 19-13-614 reserved.
19-13-615. Separate account for supplementary benefits for persons hired on or after July 1, 1981.

Part 7 — Service Retirement Benefits

19-13-701. Eligibility for service retirement — commencement of benefit.
19-13-702. Repealed.
19-13-703. Repealed.
19-13-704. Amount of service retirement benefit.

Part 8 — Disability Retirement Benefits

19-13-801. Repealed.
19-13-802. Eligibility for disability retirement.
19-13-803. Amount of disability retirement benefit.
19-13-804. Medical examination of disability retiree — cancellation of benefit.
19-13-805. Reinstatement upon termination of benefit.

Part 9 — Survivorship Benefits and Death Payments

19-13-901. Repealed.
19-13-902. Survivorship benefit.
19-13-903. Payments in absence of spouse or dependent child.

Part 10 — Minimum Benefits and Benefit Increases

19-13-1001 through 19-13-1005. Repealed.
19-13-1006. Supplement to retirement benefits for persons retiring before July 1, 1973.
19-13-1007. Benefit adjustment.
19-13-1008. Repealed.
19-13-1009. Supplement to retirement benefits for persons hired on or after July 1, 1981.

Part 1
General Provisions

19-13-101. Short title. This chapter may be cited as the "Montana Firefighters' Unified Retirement Act".

History: En. Sec. 1, Ch. 566, L. 1981.

19-13-102. Purpose — application of prior law. (1) Because cities other than those of the first or second class currently have fire department relief associations, the legislature finds and declares that the law regarding these associations cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes fire department relief associations, applies to cities other than those of the first or second class that wish to adopt it. The second, created by this chapter, applies to cities of the first or second class and those other cities that wish to adopt it. The purpose of the second system is to provide equity and security for retired firefighters who served cities of the first and second class and other cities electing to join the plan by creating a centrally administered system responsible for continuing all retirement payments from the assets of the system.

(2) Title 19, chapter 18, may not be applied in any way to a city operating under the plan created by this chapter except as otherwise provided.

History: En. Sec. 2, Ch. 566, L. 1981.

19-13-103. Firefighters' unified retirement system established. A firefighters' unified retirement system is established and governed by the provisions of chapter 2 and this chapter.

History: En. Sec. 3, Ch. 566, L. 1981; amd. Sec. 205, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 inserted reference to chapter 2. Amendment effective July 1, 1993.

19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for the firefighter's service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211.

(5) "Final average compensation" means the monthly compensation of a member hired on or after July 1, 1981, averaged over the last 36 months of the member's active service or, if the member has not been a member that long, over the period of the member's service. Lump-sum payments for annual leave paid to the member upon termination of service may be used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of final average compensation.

(6) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(7) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(8) "Last monthly compensation" means the compensation paid to a member during the member's last full month of service. Lump-sum payments for annual leave paid to the member upon termination of service may not be included in the calculation of last monthly compensation.

(9) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 10 or more years of membership service.

(10) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for service as a firefighter.

(11) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(12) "Retirement date" means the date on which the first payment of benefits is payable.

(13) "Surviving spouse" means the spouse married to a member at the time of the member's death.

History: En. Sec. 4, Ch. 566, L. 1981; amd. Sec. 5, Ch. 186, L. 1983; amd. Sec. 21, Ch. 282, L. 1983; amd. Sec. 1, Ch. 585, L. 1983; amd. Sec. 206, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 inserted definitions of compensation and last monthly compensation; deleted definition of administrator that read: ""Administrator" means the public employees' retirement division of the department of administration"; deleted definition of Board that read: ""Board" means the retirement board described in 2-15-1009"; deleted definition of credited service that read: ""Credited service" means the aggregate of a member's prior service and membership service"; in definition of city or town, before "city", deleted "municipality"; in definition of employer substituted "retirement system" for "plan"; substituted definition of final average compensation for definition of final average salary and at end of first sentence substituted "service" for "membership" and inserted second sentence regarding lump-sum payments; deleted definition of fund that read: ""Fund" means the pension trust fund in the state treasury system designated for the use of the plan"; deleted definition of member that read: ""Member" means a person who is employed by an employer as a full- or part-paid firefighter or who is entitled to a retirement allowance by virtue of his service to an employer as a firefighter"; deleted definition of member contributions that read: ""Member contributions" means the total of the deductions from a member's compensation made during a period of active membership under this chapter or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon"; deleted definition of membership service that read: ""Membership service" means a period of employment with an employer occurring after July 1, 1981, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year"; in definition of minimum retirement date, at end, substituted "membership service" for "credited service"; deleted definition of monthly compensation that read: ""Monthly compensation" means:

(a) for a full-paid firefighter, the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for his service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class"; deleted definition of plan that read: ""Plan" means the municipal firefighters' retirement system created by this chapter"; in definition of prior plan substituted "retirement system" for "plan"; deleted definition of prior service that read: ""Prior service" means a period of employment as a firefighter for which credit was granted to a member under a prior plan and has been transferred to this plan"; deleted definition of retirement allowance that read: ""Retirement allowance" means the monthly benefit payable after service or disability retirement"; in definition of retirement date, before "benefits", deleted "the retirement or disability" and after "benefits" deleted "of a member or a beneficiary"; deleted definition of totally and permanently disabled that read: ""Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a firefighter"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-105. Renumbered 19-13-210 by Code Commissioner, 1993.

19-13-106. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 6, Ch. 566, L. 1981.

19-13-107. Renumbered 19-13-310 by Code Commissioner, 1993.

19-13-108. Renumbered 19-13-211 by Code Commissioner, 1993.

19-13-109. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 9, Ch. 566, L. 1981.

19-13-110. Renumbered 19-13-212 by Code Commissioner, 1993.

19-13-111 through 19-13-114 reserved.

19-13-115. Firemen's association to advise board. The Montana state firemen's association shall serve as an advisor to the board and may meet quarterly with the board to discuss matters relating to the administration of this chapter. The association may review all medical and legal information available to the board relating to service, disability, and survivorship benefits of an individual member upon a written release of the member or the member's survivor.

History: En. Sec. 10, Ch. 566, L. 1981; amd. Sec. 207, Ch. 265, L. 1993; Sec. 19-13-201, MCA 1991; redes. 19-13-115 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 at end of second sentence, after "survivorship benefits", substituted remainder of sentence regarding individual member for "for members of the plan". Amendment effective July 1, 1993.

Part 2
Extension of Coverage by Local Government Employers

19-13-201. Renumbered 19-13-115 by Code Commissioner, 1993.

19-13-202. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 11, Ch. 566, L. 1981.

19-13-203. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 12, Ch. 566, L. 1981.

19-13-204. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 13, Ch. 566, L. 1981; amd. Sec. 22, Ch. 282, L. 1983.

19-13-205. Terminated. Sec. 7, Ch. 328, L. 1987.
History: En. Sec. 3, Ch. 328, L. 1987.

19-13-206 through 19-13-209 reserved.

19-13-210. Participation in retirement system by first- and second-class cities. Cities of the first and second class that employ full-paid firefighters shall participate in the retirement system. If a city of the first or second class is reduced to a city of the third class or a town under 7-1-4118, it shall continue to participate in the retirement system as long as it has retired firefighters or survivors eligible to receive retirement benefits.

History: En. Sec. 5, Ch. 566, L. 1981; amd. Sec. 208, Ch. 265, L. 1993; Sec. 19-13-105, MCA 1991; redes. 19-13-210 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in two places substituted "retirement system" for "plan" and near end substituted "survivors" for "beneficiaries"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-211. Election to join retirement system — transfer of assets. (1) Except for cities with only volunteer firefighters, a city other than one described in 19-13-210 may, after July 1, 1981, elect to join the retirement system by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this retirement system. The fire department relief association of the city may pass a resolution to the same effect. Upon the enactment of the ordinance and passage of the resolution, the provisions of this retirement system become applicable to the city. Any city that enacts an election ordinance and in which the fire department relief association passes a resolution shall send certified copies to the board and shall, as soon as possible, deposit into the pension trust fund all cash and securities held by its fire department relief association. The value of the securities must be determined by the board.

(2) The board of trustees of the fire department relief association as of the effective date of the election shall certify the proportion, if any, of the funds of the association that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Following

the transfer of the cash and securities required by subsection (1) and the certification required by this subsection, the fire department relief association may conclude its affairs. The shares of the members must be charged to the employer and credited to the respective members in the retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section are payable by the employer, with interest, on a basis determined by the procedure described in 19-13-213.

History: En. Sec. 8, Ch. 566, L. 1981; amd. Sec. 209, Ch. 265, L. 1993; Sec. 19-13-108, MCA 1991; redes. 19-13-211 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to retirement system for references to plan or chapter; in (1), in fourth sentence before "ordinance", inserted "election" and after "deposit" substituted "into the pension trust fund" for "with the board"; in (2), in third sentence after "respective", deleted "individual accounts of the"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-212. Termination of participation in retirement system or reduction of employer contributions. (1) If a city voluntarily terminates its contributions in the retirement system or significantly reduces the number of full-paid firefighters it employs to a degree that, in the board's opinion, inadequately funds the accrued or accruing benefits of retirement system members, the board shall request as part of the required actuarial valuation an actuarial investigation of the funding status of the city.

(2) Based on the actuarial investigation, the board may request and the city shall pay annually the amount determined to be necessary to provide adequate funding for the liabilities of the city. This amount must be in addition to any other contributions required by the retirement act.

(3) Six years after the actuarial investigation is conducted, a city making payments as provided in subsection (2) may request the board to review the city's funding status relative to the annual payments. As a result of the review, the board may adjust the payments.

History: En. Sec. 1, Ch. 468, L. 1983; amd. Sec. 210, Ch. 265, L. 1993; Sec. 19-13-110, MCA 1991; redes. 19-13-212 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in two places, substituted "retirement system" for "plan" and near end substituted "required actuarial valuation" for "actuarial valuation required in 19-13-504"; and in (2), in first sentence, substituted "the amount determined to be necessary" for "an amount needed" and before "city" inserted "liabilities of the". Amendment effective July 1, 1993.

19-13-213. Excess unfunded liabilities of prior plans. (1) The legislature finds and declares that many cities operating under prior plans have excess and unfunded liabilities, and the liabilities cannot be amortized by the percentage contributions set forth in this chapter.

(2) The board shall, within 6 months after a city is granted membership in the retirement system, determine the excess and unfunded liability of the city's previous plan. If the board determines that the city has an excess and unfunded liability under a previous plan that is not funded by sums on deposit or funds available for deposit in the pension trust fund, the city shall pay an additional sum over a period of time to amortize the city's excess liability.

History: En. Sec. 24, Ch. 566, L. 1981; amd. Sec. 3, Ch. 286, L. 1983; amd. Sec. 5, Ch. 661, L. 1983; amd. Sec. 1, Ch. 44, L. 1991; amd. Sec. 211, Ch. 265, L. 1993; Sec. 19-13-503, MCA 1991; redes. 19-13-213 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (2), in two places, substituted "board" for "administrator", near beginning of first sentence substituted "retirement system" for "plan", and in second sentence, after "for deposit", substituted "in the pension trust fund" for "with the administrator"; and deleted (3) that read: "(3) For each city with an unfunded liability, any portion of the member, the employer, and state contributions that exceeds the amount necessary to maintain the current level of unfunded liability must be applied to the reduction of the unfunded liability." Amendment effective July 1, 1993.

19-13-214. Taxing authority of employers. (1) For the purpose of making contributions required of a city under this chapter, whenever the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any additional tax authorized by law until the general taxing authority and other revenue available for that purpose is sufficient to meet the demand.

(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section.

History: En. Sec. 32, Ch. 566, L. 1981; Sec. 19-13-606, MCA 1991; redes. 19-13-214 by Code Commissioner, 1993.

Part 3

Eligibility, Membership, and Vesting

19-13-301. Active membership — inactive vested member — inactive nonvested member. (1) A full-paid firefighter becomes an active member of the retirement system:

(a) on the first day of the firefighter's service with an employer;

(b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership application with the board.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) A member with at least 10 years of membership service who terminates service and does not take a refund of accumulated contributions is

an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than 10 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. Sec. 14, Ch. 566, L. 1981; amd. Sec. 212, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1) substituted "member of the retirement system" for "member under the plan"; in (1)(a) substituted "service with an employer" for "employment by an employer"; in (1)(c) and (3) substituted "retirement system" for "plan"; inserted (4) regarding inactive member; inserted (5) regarding inactive vested member; inserted (6) regarding inactive nonvested member; and made minor changes in style. Amendment effective July 1, 1993.

19-13-302. Ineligibility for other retirement plans. An active member is not eligible to be covered under any other mandatory retirement plan to which an employer is required to contribute on the member's behalf while the member is eligible to be covered by this retirement system.

History: En. Sec. 15, Ch. 566, L. 1981; amd. Sec. 4, Ch. 661, L. 1983; amd. Sec. 213, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 at end substituted "retirement system" for "plan"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 16, Ch. 566, L. 1981.

19-13-304. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 17, Ch. 566, L. 1981; amd. Sec. 2, Ch. 191, L. 1987.

19-13-305. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 18, Ch. 566, L. 1981.

19-13-306 through 19-13-309 reserved.

19-13-310. Effect on members of prior plans. A firefighter hired before July 1, 1981, who was a member of a prior plan and who becomes a member of this retirement system retains all rights and benefits accrued under a prior plan.

History: En. Sec. 7, Ch. 566, L. 1981; amd. Sec. 214, Ch. 265, L. 1993; Sec. 19-13-107, MCA 1991; redes. 19-13-310 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted "retirement system" for "plan". Amendment effective July 1, 1993.

Part 4

Service Credit

19-13-401. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 19, Ch. 566, L. 1981.

19-13-402. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 20, Ch. 566, L. 1981.

19-13-403. Election to qualify previous military service. (1) A member with 15 years or more service credit may, at any time prior to retirement, make a written election with the board to qualify all or any portion of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service under 19-2-705. To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board based on the most recent actuarial valuation of the system. A member may not qualify more of the member's military service than the member has service credit in excess of 15 years. Military service purchased under this section may not be used in determining the member's eligibility for a service retirement.

(2) If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active duty military service under subsection (1) if the active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time.

History: En. Sec. 21, Ch. 566, L. 1981; amd. Sec. 220, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), in first sentence near beginning after "service", inserted "credit", after "active" inserted "duty", and at end, after "credit", inserted "for this service under 19-2-705", in second sentence substituted "pension trust fund" for "account" and after "based on" substituted "the most recent actuarial valuation of the system" for former text that read: "his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes", in third sentence, after "service", inserted "credit", and at end of fourth sentence, after "service retirement", deleted "requiring a minimum of 10 years of service"; in (2), in first sentence, substituted "military retirement benefits" for "normal service retirement benefits" and in second sentence, after first "active", inserted "duty"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-404. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', sheriffs', municipal police officers', or game wardens' retirement system for which the member has received a refund of the member's accumulated contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the firefighters' unified retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the firefighters' unified retirement system an amount equal to the employer contributions made during the member's service, but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the firefighters' unified retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the firefighters' unified retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19.

History: En. Sec. 6, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 221, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1)(a), in first sentence, substituted "service credit" for "creditable service" and at end substituted "accumulated contributions" for "membership contributions" and in second sentence substituted "pension trust fund" for "retirement fund" and after "based on" deleted "his compensation earned as a member of the former system and the normal contribution rate according to"; in (1)(b) substituted "division" for "administrator" and substituted "compensation" for "salaries"; in (2)(a), in second sentence, substituted "compensation" for "salary" and in third sentence, near beginning, substituted "board shall" for "board may", after "subject to" substituted "rules adopted by the board" for "the provisions of 19-13-202", and near end, after "based on", deleted "the employee's compensation earned during this period of service and the normal contribution rate according to"; and made minor changes in style. Amendment effective July 1, 1993.

Part 5

Retirement Account — Creation and Management (Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

19-13-501. Repealed. Sec. 236, Ch. 265, L. 1993.

19-13-502. Repealed. Sec. 236, Ch. 265, L. 1993.

19-13-503. Renumbered 19-13-213 by Code Commissioner, 1993.

19-13-504. Repealed. Sec. 236, Ch. 265, L. 1993.

19-13-505. Repealed. Sec. 236, Ch. 265, L. 1993.

19-13-506. Renumbered 19-13-615 by Code Commissioner, 1993.

Histories of Repealed Sections:

19-13-501. En. Sec. 22, Ch. 566, L. 1981; amd. Sec. 23, Ch. 282, L. 1983.

19-13-502. En. Sec. 23, Ch. 566, L. 1981.

19-13-504. En. Sec. 25, Ch. 566, L. 1981.

19-13-505. En. Sec. 26, Ch. 566, L. 1981.

Part 6

Contributions and Refunds

19-13-601. Deduction remitted to firemen's association — member's contributions. (1) Each employer shall retain from the compensation of each active member a sum equal to 1% of the member's compensation for services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the retirement system.

(2) The member's contribution to the retirement system is 6% of the member's compensation.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of the member's compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under 19-13-604, 19-13-605, and this section must be based on the total compensation received by the member from the employer and from workers' compensation during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions that would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. Sec. 27, Ch. 566, L. 1981; (2)En. Sec. 1, Ch. 289, L. 1983; amd. Sec. 1, Ch. 191, L. 1987; amd. Sec. 58, Ch. 613, L. 1989; amd. Sec. 216, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in five places, before "compensation", deleted "monthly"; in (1), at end, substituted "retirement system" for "plan"; in (2), after "retirement system", deleted "for each active member"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-602. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 28, Ch. 566, L. 1981.

19-13-603. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 29, Ch. 566, L. 1981; amd. Sec. 5, Ch. 103, L. 1987.

19-13-604. State contribution. The state shall make its contributions through the state auditor from the premium taxes on the insurance risks enumerated in 19-18-512. These payments must be made annually to the pension trust fund after the end of each fiscal year but no later than November 1 from the gross premium taxes after deduction for cancellations and returned premiums. The division shall notify the auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding year. The state's contribution is 23.27% of this total compensation effective July 1, 1991. As soon as practicable after receipt of the state contribution, the division shall deposit it in the pension trust fund.

History: En. Sec. 30, Ch. 566, L. 1981; amd. Sec. 6, Ch. 661, L. 1983; amd. Sec. 29, Ch. 703, L. 1985; amd. Sec. 1, Ch. 617, L. 1991; amd. Sec. 217, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in second sentence substituted "pension trust fund" for "administrator" and substituted "November 1" for "September 1", deleted former third sentence that read: "The payment is statutorily appropriated as provided in 17-7-502", in third sentence, near beginning, substituted "division" for "administrator", after "preceding year" substituted fourth sentence regarding state's contribution rate for former text that read: "and effective July 1, 1981, the state's contribution is 12% of this compensation. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, to 22.98% effective July 1, 1985, and to 23.27% effective July 1, 1991", and in last sentence substituted "division" for "administrator" and at end, after "deposit it", substituted "in the pension trust fund" for "with the state treasurer"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-605. Employer contribution. Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available to the city for this purpose. The employer's contribution is 13.02% of the total compensation paid to members. All contributions are payable monthly to the division, which shall, as soon as practicable after their receipt, deposit them in the pension trust fund.

History: En. Sec. 31, Ch. 566, L. 1981; amd. Sec. 7, Ch. 661, L. 1983; amd. Sec. 218, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted second sentence regarding employer's contribution rate for former second and third sentences that read: "Effective July 1, 1981, the employer's contribution is 12% of the total monthly compensation paid to all active members during the preceding month. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, and shall decrease to 13.02% effective July 1, 1985" and in third sentence substituted "division" for "administrator" and after "deposit them" substituted "in the pension trust fund" for "with the state treasurer"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-606. Renumbered 19-13-214 by Code Commissioner, 1993.

19-13-607. Other money credited as employer contributions. All gifts, bequests, and emoluments given to an employer or member for the benefit of the retirement system or because of any member's service as a firefighter, except when specifically allowed to be retained by the member by the member's employer, must be paid to the division. The division shall deposit them in the pension trust fund. The amounts are employer contributions but are in addition to the amounts required by 19-13-605.

History: En. Sec. 33, Ch. 566, L. 1981; amd. Sec. 219, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in two places substituted "division" for "administrator"; in first sentence substituted "retirement system" for "plan"; in second sentence substituted "shall deposit them in the pension trust fund" for "shall credit them to the fund" and after "fund" deleted "and, as soon as practicable after their receipt, deposit them with the state treasurer"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-608. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 13, L. 1987.

19-13-609. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 138, L. 1991.

19-13-610 through 19-13-614 reserved.

19-13-615. Separate account for supplementary benefits for persons hired on or after July 1, 1981. There is an account within the pension trust fund to which must be credited all amounts transferred under 19-18-606(1). The money in the account must be used to pay the supplementary benefits provided for in 19-13-1009.

History: En. Sec. 3, Ch. 454, L. 1989; amd. Sec. 215, Ch. 265, L. 1993; Sec. 19-13-506, MCA 1991; redes. 19-13-615 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence, near beginning before "an account", deleted "created in the state treasury" and after "pension trust fund" deleted "provided for in 19-13-501"; and in second sentence substituted "supplementary benefits" for "supplementary allowances". Amendment effective July 1, 1993.

Part 7

Service Retirement Benefits

19-13-701. Eligibility for service retirement — commencement of benefit. (1) A member who has reached age 50 and has completed 10 years or more of membership service is eligible for service retirement commencing on the first day of the month following the member's last day of service.

(2) A vested member who terminates service before the minimum retirement date and keeps the member's accumulated contributions on deposit is eligible for service retirement commencing on the member's minimum retirement date.

(3) A vested inactive member may file a written application with the board requesting that the member's retirement benefit commence on the first day of the month following receipt of the application. However, the retirement benefit for an inactive vested member must commence no later than the first day of the month following the member's 55th birthday.

History: En. Sec. 34, Ch. 566, L. 1981; amd. Sec. 7, Ch. 53, L. 1983; amd. Sec. 11, Ch. 86, L. 1985; amd. Sec. 17, Ch. 196, L. 1989; amd. Sec. 222, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), after "more", substituted "of membership service" for "in the aggregate as a firefighter in any capacity or rank" and at end, before "service", deleted "membership"; in (2), before first "member", inserted "vested", substituted "terminates service before the minimum retirement date" for "terminates active service before age 50", before "contributions" inserted "accumulated", after "deposit" deleted "under 19-13-304", and at end substituted "commencing on the member's minimum retirement date" for "commencing on the first day of the month coinciding with or immediately following, if none coincides, the date on which he reaches age 50"; in (3), in two places, substituted "retirement benefit" for "retirement allowance", at beginning of first sentence substituted "A vested inactive member" for "A terminated member eligible under subsection (1) or (2)", and in second sentence substituted "inactive vested member" for "eligible terminated member"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-702. Repealed. Sec. 13, Ch. 86, L. 1985.

History: En. Sec. 35, Ch. 566, L. 1981.

19-13-703. Repealed. Sec. 13, Ch. 86, L. 1985.

History: En. Sec. 36, Ch. 566, L. 1981.

19-13-704. Amount of service retirement benefit. (1) (a) A member hired before July 1, 1981, who elects to retire after having reached both 20 years of membership service and age 50 must receive a service retirement benefit equal to the sum of:

(i) 50% of the member's last monthly compensation for years of service credit up to and including 20 years; and

(ii) 1% of the member's last monthly compensation for each year of service credit after 20 years.

(b) A member hired before July 1, 1981, who elects to retire after having reached at least 10 years of membership service but prior to reaching age 50 as an active member must receive a service retirement benefit equal to 2% of the member's last monthly compensation for each year of service credit. Upon the retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent children as defined in 19-13-104.

(2) A member hired on or after July 1, 1981, who retires with at least 10 years of membership service must receive a service retirement benefit equal to 2% of the member's final average compensation for each year of service credit.

(3) The maximum monthly benefit payable to any retiree under subsection (1) may not exceed 60% of the member's last monthly compensation. The maximum monthly benefit payable to any retiree under subsection (2) may not exceed 60% of the member's final average compensation.

History: En. Sec. 37, Ch. 566, L. 1981; amd. Sec. 12, Ch. 86, L. 1985; amd. Sec. 3, Ch. 63, L. 1989; amd. Sec. 223, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 substituted (1) and (2) regarding amount of service retirement benefit for former text that read: "(1) (a) A member hired before July 1, 1981, who is eligible under 19-13-701 and who elects to retire after completing 20 years of service and reaching age 50 as an active firefighter shall receive a service retirement allowance equal to one-half the monthly compensation last received by the member for his service as an active firefighter. A member who completes more than 20 years of service shall receive an additional 1% of his final monthly compensation for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(b) A member hired before July 1, 1981, who is eligible under 19-13-701 and who elects to retire after completing 10 years or more of service but has not both completed 20 years of service and reached age 50 as an active firefighter shall receive a service retirement allowance equal to 2% of the monthly compensation last received by the member for each year of service up to a maximum of 60% of his final monthly salary.

(i) If the member dies after he is permanently separated from service and before he both reaches age 50 and completes 20 years of service as an active firefighter, the allowance prescribed in subsection (1)(b) must be made to the surviving spouse beginning on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active firefighter and terminating upon the surviving spouse's death. If there is no surviving spouse or if the surviving spouse dies and if the firefighter leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent as defined in 19-13-104.

(ii) If the firefighter dies after he both reaches age 50 and completes 20 years of service as an active firefighter, the payments must be made to the surviving spouse or children as provided in subsection (1)(b)(i).

(2) A member hired on or after July 1, 1981, who is eligible under 19-13-701 shall receive a service retirement allowance equal to 2% of his final average salary for each year of service up to a maximum of 30 years of service"; and inserted (3) regarding limitation on maximum monthly benefit. Amendment effective July 1, 1993.

Part 8
Disability Retirement Benefits

19-13-801. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 38, Ch. 566, L. 1981.

19-13-802. Eligibility for disability retirement. If a member is determined by the board to be disabled, the member is entitled to receive a disability retirement benefit, regardless of the length of the member's service, beginning the first day after the date on which the member became disabled and terminated service because of the disability.

History: En. Sec. 39, Ch. 566, L. 1981; amd. Sec. 224, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in two places, before "disabled", deleted "totally and permanently", near middle substituted "disability retirement benefit" for "disability retirement allowance", and at end, after "disabled", inserted "and terminated service because of the disability"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-803. Amount of disability retirement benefit. (1) A member hired before July 1, 1981, who becomes disabled:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's last monthly compensation;

(b) after completing 20 years or more of membership service must receive the disability retirement benefit provided in subsection (1)(a) increased at a rate of 1% of the member's last monthly compensation for each year of service credit in excess of 20, up to a maximum benefit equal to 60% of the member's last monthly compensation.

(2) A member hired on or after July 1, 1981, who becomes disabled:

(a) before completing 25 years of membership service must receive a disability retirement benefit equal to one-half the member's last monthly compensation;

(b) after completing 25 years or more of membership service must receive the disability retirement benefit provided in subsection (2)(a) increased at a rate of 2% of the member's last monthly compensation for each year of service credit in excess of 25, up to a maximum benefit equal to 60% of the member's last monthly compensation.

(3) A member's disability retirement benefit must be paid first to the member during the member's lifetime and, upon the member's death, to the member's surviving spouse. If upon a member's death the member leaves no surviving spouse or upon the death of the surviving spouse, the member's benefit must be paid to the member's dependent children as long as they remain dependent children as defined in 19-13-104.

History: En. Sec. 40, Ch. 566, L. 1981; amd. Sec. 2, Ch. 617, L. 1991; amd. Sec. 225, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted "disability retirement benefit" for "disability retirement allowance"; in (1) substituted "who becomes disabled" for "who is eligible under 19-13-802"; in (1)(a), before "service", inserted "membership" and substituted "the member's last monthly compensation" for "the monthly compensation last received by the member for his services as an active firefighter"; in (1)(b), before "service", inserted "membership", substituted "1% of the member's last monthly compensation for each year of service credit" for "1% for each year", and at end substituted "maximum benefit equal to 60% of the member's last monthly compensation" for "maximum of 60% of the monthly compensation last received by the member"; in (2) substituted "who becomes disabled" for "who is eligible under 19-13-802"; in (2)(a), before "service", inserted "membership" and substituted "member's last monthly compensation" for "monthly compensation last received by the member for his services as an active firefighter"; in (2)(b), before "service", inserted "membership", substituted "2% of the member's last monthly compensation for each year of service credit" for "2% for each year", and at end substituted "maximum benefit equal to 60% of the member's last monthly compensation" for "maximum of 5 years of additional service"; inserted (3) regarding payment of benefit upon member's death; and made minor changes in style. Amendment effective July 1, 1993.

19-13-804. Medical examination of disability retiree — cancellation of benefit. (1) The board in its discretion may require the recipient of a disability retirement benefit to undergo a medical examination at the board's expense. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on. Based on the results of the examination, the board shall determine whether the recipient has the physical or mental capacity to perform the duties required by the recipient's position. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled. The board shall notify the recipient of this determination and the cancellation of the recipient's benefit.

(2) The cancellation of a disability retirement benefit because a member is no longer incapacitated does not prejudice any right of the member to a service retirement benefit.

History: En. Sec. 41, Ch. 566, L. 1981; amd. Sec. 226, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 in four places substituted references to disability retirement benefit or benefit for references to disability retirement allowance, disability allowance, or allowance; and made minor changes in style. Amendment effective July 1, 1993.

19-13-805. Reinstatement upon termination of benefit. (1) (a) An inactive member whose disability retirement benefit is canceled as provided in 19-13-804 must be reinstated to the position held by the member immediately before the member's retirement or to a position in the same classification with duties within the member's capacity if an appropriate vacancy exists within the member's fire department. The board shall advise the employer that the disability retirement benefit has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the inactive member may have or claim to have.

(b) If an appropriate vacancy does not exist within an inactive member's fire department when the member's disability benefit is canceled under 19-13-804, the member's benefit must be reinstated until a vacancy occurs.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following receipt of notice under 19-13-804, the member is considered to have been continuously employed

during the term of the member's disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of this notice, the member's termination of employment is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement must be determined accordingly.

History: En. Sec. 42, Ch. 566, L. 1981; amd. Sec. 227, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to disability retirement benefit, disability benefit, retirement benefit, or benefit for references to disability retirement allowance, disability allowance, retirement allowance, or allowance; and made minor changes in style. Amendment effective July 1, 1993.

Part 9

Survivorship Benefits and Death Payments

19-13-901. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 43, Ch. 566, L. 1981; amd. Sec. 4, Ch. 63, L. 1989.

19-13-902. Survivorship benefit. (1) (a) Upon the death before retirement of an active member hired before July 1, 1981, the member's surviving spouse, if there is one, must receive a survivorship benefit equal to one-half the last monthly compensation received by the member. If the member leaves one or more dependent children, then, upon the member's death if the member leaves no surviving spouse or upon the death of the surviving spouse, the member's dependent children must collectively receive the same benefit that a surviving spouse would have received, as long as the children remain dependent children as defined in 19-13-104.

(b) If the deceased member completed over 20 years of membership service, the survivorship benefit provided in subsection (1)(a) must be increased at a rate of 1% of the last monthly compensation for each year in excess of 20, up to a maximum of 60% of the last monthly compensation received by the member.

(2) Upon the death before retirement of a member hired on or after July 1, 1981, the member's surviving spouse, if there is one, must receive a survivorship benefit equal to one-half of the member's final average compensation. If the member leaves one or more dependent children, then, upon the member's death if the member leaves no surviving spouse or upon the death of the surviving spouse, the member's dependent children must collectively receive the same benefit that a surviving spouse would have received, as long as the children remain dependent children as defined in 19-13-104.

History: En. Sec. 44, Ch. 566, L. 1981; amd. Sec. 5, Ch. 63, L. 1989; amd. Sec. 228, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to survivorship benefit or benefit for references to survivorship allowance or allowance; in (1), at end of first sentence after "member", deleted "for his service as an active firefighter" and near end of second sentence, after "dependent", inserted "children"; in (1)(b), near beginning before "service", inserted "membership" and after "1%" inserted "of the last monthly compensation"; in (2), in first sentence, substituted "final average compensation" for "final average salary" and near beginning of second sentence substituted "member" for "firefighter" and near end, after "dependent", inserted "children"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-903. Payments in absence of spouse or dependent child. If a member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the division, the division shall pay to the designated beneficiary an amount equal to the member's contributions less any retirement benefits paid to the member before the member's death. If the deceased member did not designate a beneficiary or the beneficiary predeceased the member, this amount must be paid to the member's estate.

History: En. Sec. 45, Ch. 566, L. 1981; amd. Sec. 6, Ch. 186, L. 1983; amd. Sec. 229, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 near beginning, before "child", inserted "dependent" and in two places substituted "division" for "administrator"; and made minor changes in style. Amendment effective July 1, 1993.

Part 10

Minimum Benefits and Benefit Increases

19-13-1001 through 19-13-1005. Repealed. Sec. 236, Ch. 265, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

19-13-1001. En. Sec. 47, Ch. 566, L. 1981.

19-13-1002. En. Sec. 48, Ch. 566, L. 1981.

19-13-1003. En. Sec. 49, Ch. 566, L. 1981; amd. Sec. 3, Ch. 191, L. 1987; amd. Sec. 16, Ch. 823, L. 1991.

19-13-1004. En. Sec. 50, Ch. 566, L. 1981.

19-13-1005. En. Sec. 51, Ch. 566, L. 1981.

19-13-1006. Supplement to retirement benefits for persons retiring before July 1, 1973. (1) The retirement system shall pay to each member retired before July 1, 1973, or the member's surviving spouse or dependent children a monthly retirement benefit of not less than one-half the regular monthly compensation paid to a confirmed active firefighter of the city that last employed the member as a firefighter, as provided each year in the budget of that city. If the city that last employed the member as a firefighter no longer employs a full-paid firefighter, the member's or survivor's benefit may not be less than one-half the average regular monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter. In the case of volunteer firefighters, the retirement benefit may not exceed $75 per month. Distribution of the money provided for this purpose under 19-18-606(1) must be made according to subsection (2).

(2) (a) At the beginning of each fiscal year the division shall request and, except as provided in subsection (2)(b), the state auditor shall issue from the state special revenue fund and deliver to the division an amount certified to be equal to the total annual dollar difference between the total retirement benefits paid to all retirees or their surviving spouses or dependent children in the previous fiscal year and the total benefits payable on June 30, 1973. The division shall deposit this money into the pension trust fund.

(b) If insufficient money is contained in the state special revenue fund to pay the amount requested in subsection (2)(a), the auditor shall pay to the division the balance contained in the state special revenue fund. The division shall continue to request any portion of the amount requested under subsection (2)(a) not paid in previous fiscal years plus sufficient interest to reimburse the pension trust fund, which amounts must be paid to the division prior to determining whether sufficient cash remains in the special revenue fund to make any payments into the account established in 19-13-615. The auditor shall pay the requests as money in the state special revenue fund becomes available.

History: En. Sec. 52, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 468, L. 1983; amd. Sec. 1, Ch. 698, L. 1985; amd. Sec. 230, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to retirement benefit for references to retirement allowance and substituted references to Division for references to administrator; in (1), in two places, substituted "retirement system" for "plan", in two places substituted references to member for references to firefighter, in two places substituted "regular monthly compensation" for "regular monthly salary", in first sentence, before "children", inserted "dependent", and in second sentence substituted "survivor's benefit" for "his beneficiary's allowance"; in (2)(a) and (2)(b) substituted "pension trust fund" for "fund"; in (2)(a), near end of first sentence before "children", inserted "dependent"; in (2)(b), in second sentence after "pension trust fund", substituted remainder of sentence regarding payments to Division for "as defined in 19-13-104, and"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-1007. Benefit adjustment. (1) For a member retiring on or after July 1, 1973, who was hired before July 1, 1981, or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704(1)(a), the disability retirement benefit provided in 19-13-803(1), and the survivorship benefit provided in 19-13-902(1) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.

(2) For a member hired on or after July 1, 1981, or the member's surviving spouse or dependent children, the disability retirement benefit provided in 19-13-803(2) and the survivorship benefit provided in 19-13-902(2) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.

(3) If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsections (1) and (2) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

(4) If the employment of a vested member hired before July 1, 1981, is involuntarily discontinued before the member reaches age 50 because of the termination of employment of all full-paid firefighters in the city that employed the member, the member's service retirement benefit provided in 19-13-704(1)(b) and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 10 but less than 20 years of membership service, 2% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service.

History: En. Sec. 46, Ch. 566, L. 1981; amd. Sec. 3, Ch. 468, L. 1983; amd. Sec. 231, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to service retirement benefit, disability retirement benefit, survivorship benefit, service retirement benefit, or benefit for references to service retirement allowance, disability retirement allowance, survivorship allowance, service retirement allowance, or allowance and substituted "retirement system" for "plan"; in (3) substituted "survivor's benefit" for "his beneficiary's allowance"; in (4)(a) and (4)(b) substituted "earned" for "completed" and before "service" inserted "membership"; deleted (5) that read: "(5) In lieu of the benefit adjustment provided in subsection (4), a member may elect to receive an early retirement allowance, beginning upon termination of employment, that is the actuarial equivalent of the accrued portion of the service retirement allowance that would have been payable to him beginning at age 50"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-1008. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 14, L. 1987.

19-13-1009. Supplement to retirement benefits for persons hired on or after July 1, 1981. (1) The division shall pay a supplemental benefit from the account provided for in 19-13-615 to each member hired on or after July 1, 1981, who has both earned 25 years of membership service and reached age 50 as an active firefighter or to the member's surviving spouse or dependent children. Except as provided in subsection (2), the supplemental benefit, when added to the service retirement benefit, must equal one-half the regular monthly compensation paid to a newly confirmed full-paid active firefighter of the city that last employed the member as a firefighter as provided each year in the budget of that city. If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's supplemental benefit must be calculated on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

(2) If the amount available to the account is insufficient to fully fund the supplemental benefit provided for in subsection (1), the supplemental benefit for each eligible member or survivor must be reduced by an equal percentage so that the amount contained in the account is not exceeded.

History: En. Sec. 2, Ch. 454, L. 1989; amd. Sec. 232, Ch. 265, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to supplemental benefit or service retirement benefit for references to supplemental allowance or service retirement allowance; in (1), near beginning of first sentence, substituted "division" for "administrator" and near middle, after "both", substituted "earned 25 years of membership service" for "completed 25 years of service" and near end of subsection substituted "retirement system" for "plan"; in (2), after "member", inserted "or survivor"; and made minor changes in style. Amendment effective July 1, 1993.

CHAPTER 14

RESERVED

CHAPTER 15

RETIREMENT ADJUSTMENT

Part 1 — General Provisions

19-15-101. Retirement adjustment — annual deposit — statutory appropriation.
19-15-102. Montana retirement adjustment payments — public employees' retirement board.

Part 1
General Provisions

19-15-101. Retirement adjustment — annual deposit — statutory appropriation. (1) There are statutorily appropriated, as provided in 17-7-502, from the general fund to the public employees' retirement board and the teachers' retirement board the amounts provided in subsection (2) for distribution to members of retirement systems as provided in 19-15-102.

(2) On or before March 1 of each year, the state treasurer shall pay to the public employees' retirement board and the teachers' retirement board an amount equal to 2 ½% of the total benefits paid by both systems during the prior calendar year. In distributing the appropriations to the boards, the treasurer shall consult with the boards to determine the amounts necessary for uniform payments to members. The amount of the benefits must be certified to the treasurer by the public employees' retirement board and the teachers' retirement board no later than February 15 of each year. For the purpose of this section, the public employees' retirement board shall collect information and certify the amount of benefits paid pursuant to Title 19, chapters 18 and 19. The boards of trustees of local police retirement funds, provided in 19-19-201, and boards of trustees of local fire department relief associations, provided in 19-18-104, shall submit reports on benefit payments containing information requested by the public employees' retirement board.

History: En. Sec. 4, Ch. 823, L. 1991; amd. Sec. 2, Ch. 10, Sp. L. January 1992.

19-15-102. Montana retirement adjustment payments — public employees' retirement board. (1) Not later than April 1 of each year, the public employees' retirement board and the teachers' retirement board shall fix and pay to those members entitled to it an annual adjustment payment. The adjustment payment is determined for each system based upon the benefits paid by the system in the prior calendar year and on the annual benefit to which each Montana resident member of the system is entitled.

(2) (a) The public employees' retirement board shall allocate money appropriated for retirement adjustment to the public retirement systems in Title 19, chapters 3 and 5 through 9, 13, and 17 through 19. The allocation to

each system must be made based upon the annual amount each system's benefits payments bears to the amount paid by all of the systems specified in this subsection.

(b) The teachers' retirement board shall administer the money appropriated for retirement adjustment to the teachers' retirement system in Title 19, chapter 20.

(3) (a) Each member of a system listed in subsection (2) who is a resident of the state and who is entitled to an annual benefit is entitled to a retirement adjustment payment. Each retirement system specified in subsection (2), through the public employees' retirement board, the teachers' retirement board, or a local retirement board of trustees, as appropriate, shall distribute its allocation of the money appropriated for retirement adjustment to its members entitled to adjustment payments. The governing board of each system set forth in subsection (2) shall provide an annual adjustment payment that is a percentage of annual benefits.

(b) The methodology that the public employees' retirement board and the teachers' retirement board use to calculate adjustments for systems administered by them must be adopted by rule pursuant to Title 2, chapter 4.

(c) For the purposes of this section, a "Montana resident" means a person domiciled in the state and any person who maintains a permanent place of abode within the state.

History: En. Sec. 5, Ch. 823, L. 1991; amd. Sec. 3, Ch. 10, Sp. L. January 1992.

CHAPTER 16

RESERVED

CHAPTER 17

VOLUNTEER FIREFIGHTERS' COMPENSATION ACT

Part 1 — General Provisions

19-17-101. Short title.
19-17-102. Definitions.
19-17-103. Payments to volunteer fire companies maintaining group insurance.
19-17-104. Penalty for false statements or claims.
19-17-105. Duties of volunteer firefighters.

Part 2 — Administration of Fund

19-17-201. Administration of chapter.
19-17-202. Reports of board.
19-17-203. Rules to be made by board.
19-17-204. Office supplies to be a charge against the fund.

Part 3 — Contributions to Fund

19-17-301. Fire insurance premium tax to be paid into fund.
19-17-302. Earnings to be part of moneys.

Part 4 — Pension Benefits

19-17-401. Eligibility for pension benefits.
19-17-402. Certificate of eligibility.
19-17-403. Procedure for claiming pension benefits.
19-17-404. Pension benefits.
19-17-405. Pension benefits to surviving spouse or children.
19-17-406. Termination of pension when no surviving spouse or child.
19-17-407. Payment of pension benefits — exemption from taxation.
19-17-408. Medical review of certain disability retirees.
19-17-409. Cancellation and reinstatement of certain pensions.

Part 5 — Disability and Death Benefits

19-17-501. Eligibility for disability and death benefits.
19-17-502. Procedure for claiming disability benefits.
19-17-503. Procedure for claiming death benefit.
19-17-504. Disability benefits.
19-17-505. Death benefit.
19-17-506. Payment of disability and death benefits.

Part 1
General Provisions

19-17-101. Short title. This chapter shall be known and may be cited as the "Volunteer Firefighters' Compensation Act".

History: En. Sec. 1, Ch. 65, L. 1935; re-en. Sec. 5158.1, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2020; Sec. 19-12-101, MCA 1991; redes. 19-17-101 by Code Commissioner, 1993.

19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Board" means the public employees' retirement board provided for in 2-15-1009.

(2) "Fire company" means a fire company organized in an unincorporated area, town, or village under the laws of the state of Montana.

(3) The fiscal year begins on July 1 and ends on June 30 of each year.

(4) "Fund" or "volunteer firefighters' fund" means the volunteer firefighters' pension trust fund.

History: (1) thru (3), (5)En. 11-2020.1 by Sec. 19, Ch. 157, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 1, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2020.1, R.C.M. 1947; (4)En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; Sec. 11-2022, R.C.M. 1947; R.C.M. 1947, 11-2020.1, 11-2022(5)(d); amd. Sec. 1, Ch. 57, L. 1983; amd. Sec. 19, Ch. 282, L. 1983; Sec. 19-12-102, MCA 1991; redes. 19-17-102 by Code Commissioner, 1993.

19-17-103. Payments to volunteer fire companies maintaining group insurance. To encourage and aid volunteer fire companies to maintain group insurance for benefits on account of the death of or injury incurred by members while in the performance of duties as volunteer firefighters, $75 per year for each mobile unit of firefighting equipment, not exceeding two units for any one company, shall be paid by the board from the volunteer firefighters' fund to each volunteer fire company maintaining such insurance or to the organization or agency maintaining such insurance for a volunteer fire company.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(4); amd. Sec. 2, Ch. 57, L. 1983; Sec. 19-12-103, MCA 1991; redes. 19-17-103 by Code Commissioner, 1993.

19-17-104. Penalty for false statements or claims. A person required to make a statement or affidavit by this chapter who willfully falsifies such statement or affidavit or a person who files a false claim under this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $500 or imprisonment not exceeding 6 months, or both.

History: En. Sec. 12, Ch. 65, L. 1935; re-en. Sec. 5158.12, R.C.M. 1935; amd. Sec. 30, Ch. 157, L. 1977; R.C.M. 1947, 11-2031; amd. Sec. 31, Ch. 114, L. 1979; Sec. 19-12-104, MCA 1991; redes. 19-17-104 by Code Commissioner, 1993.

19-17-105. Duties of volunteer firefighters. The duties of a volunteer firefighter include any activity authorized by an officer of the fire company relating to travel to, participation in, and return from calls for fire protection, fire company meetings, training, medical assistance, search and rescue assistance, public service activities, such as parades, and calls for assistance to protect individual or public health and safety.

History: En. Sec. 2, Ch. 49, L. 1983; Sec. 19-12-105, MCA 1991; redes. 19-17-105 by Code Commissioner, 1993.

Part 2
Administration of Fund

19-17-201. Administration of chapter. The board shall administer the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan, and all payments made under 19-17-103, 19-17-405, 19-17-407, and 19-17-506 shall be made by warrants drawn by the board. The board shall review the sufficiency of benefits paid by the retirement system and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living.

History: En. Sec. 7, Ch. 65, L. 1935; re-en. Sec. 5158.7, R.C.M. 1935; amd. Sec. 193, Ch. 147, L. 1963; amd. Sec. 1, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 26, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2026; amd. Sec. 3, Ch. 57, L. 1983; amd. Sec. 7, Ch. 481, L. 1993; Sec. 19-12-201, MCA 1991; redes. 19-17-201 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 481 inserted second sentence requiring Board to review sufficiency of benefits paid by retirement system and to recommend to Legislature changes that may be necessary for retired members and their beneficiaries to maintain stable standard of living.

19-17-202. Reports of board. (1) The board shall, not later than November 1 of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan. The report may include suggestions or recommendations that the board considers of value for public information.

(2) Copies of the reports must be made available by the board to the chief or other representative of any volunteer fire company or companies that request them.

History: En. Sec. 10, Ch. 65, L. 1935; re-en. Sec. 5158.10, R.C.M. 1935; amd. Sec. 5, Ch. 118, L. 1965; amd. Sec. 1, Ch. 159, L. 1967; amd. Sec. 28, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2029; amd. Sec. 4, Ch. 57, L. 1983; (3)En. Sec. 1, Ch. 81, L. 1991; amd. Sec. 38, Ch. 10, L. 1993; amd. Sec. 1, Ch. 283, L. 1993; Sec. 19-12-202, MCA 1991; redes. 19-17-202 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendments: Chapter 10 deleted former (3) that read: "(3) By January 10, 1993, the board shall provide to the 53rd legislature a report on the funding available in the volunteer firefighters' fund for benefits provided under the Volunteer Firefighters' Compensation Act. The legislature shall review the sufficiency of the fund to provide the current level of benefits and may eliminate, modify, or continue the benefit levels provided in 19-12-404"; and made minor changes in style.

Chapter 283 in first sentence in (3) substituted "1995" for "1993" and "54th legislature" for "53rd legislature". Amendment effective July 1, 1993.

19-17-203. Rules to be made by board. The board shall make such rules as it considers necessary and advisable in its administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan, not inconsistent with the provisions thereof.

History: En. Sec. 8, Ch. 65, L. 1935; re-en. Sec. 5158.8, R.C.M. 1935; amd. Sec. 2, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 27, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2027(1); amd. Sec. 5, Ch. 57, L. 1983; Sec. 19-12-203, MCA 1991; redes. 19-17-203 by Code Commissioner, 1993.

19-17-204. Office supplies to be a charge against the fund. Necessary expenses of the board for office supplies, stationery, and forms in connection with the administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan are a charge against the fund. The board shall draw from the fund through warrants at such intervals as it considers proper to pay these expenses.

History: En. Sec. 8, Ch. 65, L. 1935; re-en. Sec. 5158.8, R.C.M. 1935; amd. Sec. 2, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 27, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2027(2); amd. Sec. 6, Ch. 57, L. 1983; Sec. 19-12-204, MCA 1991; redes. 19-17-204 by Code Commissioner, 1993.

Part 3
Contributions to Fund

19-17-301. Fire insurance premium tax to be paid into fund. The state auditor and ex officio commissioner of insurance shall annually deposit in the volunteer firefighters' fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in 19-18-512, computed before the amounts provided for by 19-13-604 and 19-18-512 are deducted. The moneys shall be used for the payment of claims and administrative costs as provided in this chapter. The money is statutorily appropriated as provided in 17-7-502.

History: En. Sec. 11, Ch. 65, L. 1935; re-en. Sec. 5158.11, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1947; amd. Sec. 1, Ch. 164, L. 1959; amd. Sec. 191, Ch. 147, L. 1963; amd. Sec. 2, Ch. 204, L. 1975; amd. Sec. 4, Ch. 95, L. 1977; amd. Sec. 29, Ch. 157, L. 1977; amd. Sec. 3, Ch. 480, L. 1977; R.C.M. 1947, 11-2030; amd. Sec. 1, Ch. 313, L. 1981; amd. Sec. 61, Ch.

566, L. 1981; amd. Sec. 28, Ch. 703, L. 1985; Sec. 19-12-301, MCA 1991; redes. 19-17-301 by Code Commissioner, 1993.

19-17-302. Earnings to be part of moneys. All earnings made by moneys received under 19-17-301 by reason of interest paid for the deposit thereof or otherwise shall be credited to and become a part of such moneys.

History: En. Sec. 9, Ch. 65, L. 1935; re-en. Sec. 5158.9, R.C.M. 1935; amd. Sec. 194, Ch. 147, L. 1963; amd. Sec. 3, Ch. 95, L. 1977; R.C.M. 1947, 11-2028; Sec. 19-12-302, MCA 1991; redes. 19-17-302 by Code Commissioner, 1993.

Part 4

Pension Benefits

19-17-401. Eligibility for pension benefits. In order to qualify for participation in the volunteer firefighters' pension plan under 19-17-404, a volunteer firefighter shall meet each of the following requirements:

(1) (a) To qualify for full participation, a volunteer firefighter must have completed a total of at least 20 years' service as an active volunteer firefighter and as an active member of a qualified volunteer fire company.

(b) If a firefighter is prevented from completing at least 20 years' service, the firefighter may qualify for partial participation if the firefighter has completed at least 10 years' service and has attained the age of 60. In that event, the firefighter is eligible for only a proportion of the benefits specified in 19-17-404, determined by multiplying the benefits by a fraction, the numerator of which is the number of years of active service completed and the denominator of which is 20.

(c) The years of active service are cumulative and need not be continuous. The service need not be acquired with one single fire company but may be a total of separate periods of active service with different fire companies in different fire districts.

(d) Effective March 1, 1965, the annual period of service for the purpose of this chapter is the fiscal year. A fractional part of any year may not count toward the service requirement, and to receive credit for any particular year, a volunteer firefighter shall serve with one particular volunteer fire company throughout that entire fiscal year.

(2) (a) Except as provided in subsection (2)(b), in order to receive pension benefits, a firefighter must have attained the age of 55 but need not be an active volunteer firefighter or an active member of any volunteer fire company when that age is reached.

(b) An active member of a volunteer fire company whose duty-related injury results in a permanent total disability as defined in 39-71-116 is eligible, regardless of age, to receive a partial pension calculated as follows:

(i) for a member with less than 10 years of service, a pension calculated as provided in subsection (1)(b) in which the numerator equals 10; or

(ii) for a member with 10 years or more of service, a pension calculated as provided in subsection (1)(b).

(3) During each of the years for which credit is claimed under subsection (1), a firefighter must have completed a minimum of 30 hours of instruction in matters pertaining to firefighting under a program formulated and supervised by the chief or foreman of the volunteer fire company.

(4) Effective July 1, 1965, a volunteer firefighter may not receive credit for any year of membership in a volunteer fire company unless, throughout the year:

(a) the company maintained firefighting equipment in serviceable condition of a value of $2,500 or more; and

(b) the company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.

(5) In order to receive pension benefits, a firefighter must have ceased to be an active member of any volunteer fire company, and if the firefighter applies for and receives pension benefits under this part, the firefighter is not eligible to become an active member of any volunteer fire company.

History: En. Sec. 4, Ch. 65, L. 1935; re-en. Sec. 5158.4, R.C.M. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973; amd. Sec. 1, Ch. 48, L. 1975; amd. Sec. 22, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2023(2); amd. Sec. 1, Ch. 177, L. 1981; amd. Sec. 66, Ch. 464, L. 1987; amd. Sec. 2, Ch. 283, L. 1993; Sec. 19-12-401, MCA 1991; redes. 19-17-401 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 283 in (1)(b), in first sentence after "20 years' service", deleted "by dissolution or discontinuance of his volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control" and at end inserted reference to attainment of age 60; in (2)(a), after exception clause, inserted reference to receipt of pension benefits; in (5) inserted introductory clause concerning receipt of pension benefits; and made minor changes in style. Amendment effective July 1, 1993.

19-17-402. Certificate of eligibility. On or before September 1 of each year, the chief or foreman of every volunteer fire company shall prepare and file with the board a certificate, subscribed and verified under oath, stating whether or not his company qualified under 19-17-401(4) during the preceding fiscal year and listing the full name and residence address of each member of his company who satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by 19-17-401(3). The verified certificate shall be maintained in a permanent file by the board for the purpose of establishing eligibility for participation in the volunteer firefighters' pension plan and shall be open for inspection as a public record.

History: En. 11-2020.2 by Sec. 20, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2020.2; amd. Sec. 7, Ch. 57, L. 1983; Sec. 19-12-402, MCA 1991; redes. 19-17-402 by Code Commissioner, 1993.

19-17-403. Procedure for claiming pension benefits. (1) Anyone claiming eligibility under the volunteer firefighters' pension plan must file his claim with the board upon a form to be provided therefor by the board. The claim must be filed on or before May 1 of the calendar year in which the claimant seeks to qualify for participation in the pension plan.

(2) The claim must contain:

(a) the name, address, and date of birth of the claimant and of the volunteer firefighter, if he is not the claimant;

(b) the fiscal year during which eligibility will commence; and

(c) the years during which service as a volunteer firefighter was rendered and the names of the volunteer fire companies with which the service was rendered.

(3) The board may require such proof of age and service as it may consider proper, but it must accept a certificate filed under 19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of such service.

(4) If the claim is properly filed and the claimant is found by the board to be properly qualified to participate in the volunteer firefighters' pension plan, the name of the claimant shall be added to the list of qualified persons and the claimant will then be entitled to participate in the volunteer firefighters' pension plan as of the fiscal year beginning July 1 next following the filing of the claim.

History: En. Sec. 5, Ch. 65, L. 1935; re-en. Sec. 5158.5, R.C.M. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971; amd. Sec. 23, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2024(2); amd. Sec. 8, Ch. 57, L. 1983; Sec. 19-12-403, MCA 1991; redes. 19-17-403 by Code Commissioner, 1993.

19-17-404. Pension benefits. (1) Each person who meets the requirements set forth in 19-17-401 or, in the case of a beneficiary, 19-17-405(1) and who has completed and filed a claim as provided in 19-17-403 is entitled to participate in the volunteer firefighters' pension plan and to receive payments as provided in this section.

(2) The payments must be computed each year in the following manner:

(a) For fiscal years 1994 and 1995, the base benefit level is $120 per month for each retiree qualifying for full participation under the provisions of 19-17-401(1)(a). Partial participation is calculated under the provisions of 19-17-401(1)(b).

(b) Whenever at the close of business on the last day of a fiscal year there is a balance in the volunteer firefighters' fund in excess of $6 million, the board shall set aside the amount to be paid to each qualifying claimant.

(c) For the purpose of computation and payment of benefits under this section, if children of a volunteer firefighter become eligible for benefits, all the children of the volunteer firefighter must be treated collectively as one claimant.

(3) If the amount of the benefit for a qualified claimant is at least $20 per month throughout the succeeding fiscal year, the pension must be paid monthly on or before the last day of each month. If the amount of the benefit for a qualified claimant is less than $20 per month, the qualified claimant's full pension for that year must be paid in one lump payment on or before December 15 of that year.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(5)(a) thru (5)(c); amd. Sec. 1, Ch. 24, L. 1983; amd. Sec. 9, Ch. 57, L. 1983; amd. Sec. 2, Ch. 81, L. 1991; amd. Sec. 3, Ch. 283, L. 1993; Sec. 19-12-404, MCA 1991; redes. 19-17-404 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 283 in 2(a) substituted "fiscal years 1994 and 1995" for "fiscal years 1992 and 1993"; deleted former (2)(c) that read: "(c) The total pension payable to a qualified claimant under this section may not exceed $200 per month, and the amount to be set aside from the volunteer firefighters' fund may not exceed the amount necessary to pay the maximum of $200 per month to each claimant qualified as of the beginning of the fiscal year during which the payments are to be made"; and made minor changes in style. Amendment effective July 1, 1993.

19-17-405. Pension benefits to surviving spouse or children. (1) The full or partial participation pension shall be paid or continue to be paid to the surviving spouse, if any, until such spouse's death or remarriage or, if the deceased volunteer firefighter left no surviving spouse but left a child or children under the age of 18, to the guardian or other person having custody of the children until the youngest child reaches the age of 18. The pension shall be paid in each of the following circumstances:

(a) the death on or after July 1, 1985, of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for full participation;

(b) the death on or after July 1, 1985, of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for partial participation;

(c) the death on or after July 1, 1985, of a volunteer firefighter after qualifying for full participation but before receiving payments totaling at least $4,000; or

(d) the death on or after July 1, 1985, of a volunteer firefighter after he has qualified for partial participation but before he has received payments totaling the proportion of $4,000 determined under the formula prescribed in 19-17-401(1)(b).

(2) Payments under subsection (1) shall terminate, in the case of a full participation pension, when a total of $4,000 has been paid upon the pension, including any payments made to the volunteer firefighter before his death, or in the case of a partial participation pension, when a total of the proportion of $4,000 determined under the formula prescribed in 19-17-401(1)(b) has been paid upon the pension, including any payments made to the volunteer firefighter before his death.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(3), (4); amd. Sec. 1, Ch. 130, L. 1985; Sec. 19-12-405, MCA 1991; redes. 19-17-405 by Code Commissioner, 1993.

19-17-406. Termination of pension when no surviving spouse or child. If a deceased volunteer firefighter leaves neither a surviving spouse nor a child under the age of 18, his pension shall terminate at the end of the month prior to the month in which his death occurs.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(5); Sec. 19-12-406, MCA 1991; redes. 19-17-406 by Code Commissioner, 1993.

19-17-407. Payment of pension benefits — exemption from taxation. (1) All payments under the volunteer firefighters' pension plan must be approved by the board and paid by warrants drawn upon the pension trust fund, payable to the order of the individual qualified volunteer firefighter or the beneficiary as provided in 19-17-405(1).

(2) The first $3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1,

Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(2); amd. Sec. 10, Ch. 57, L. 1983; amd. Sec. 20, Ch. 282, L. 1983; amd. Sec. 15, Ch. 823, L. 1991; Sec. 19-12-407, MCA 1991; redes. 19-17-407 by Code Commissioner, 1993.

19-17-408. Medical review of certain disability retirees. The board may require the recipient of a partial pension resulting from a permanent, total disability to undergo periodic medical examinations. The examinations must be made by a physician or surgeon at the recipient's residence or another place mutually agreed on. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient remains permanently and totally disabled.

History: En. Sec. 2, Ch. 177, L. 1981; Sec. 19-12-408, MCA 1991; redes. 19-17-408 by Code Commissioner, 1993.

19-17-409. Cancellation and reinstatement of certain pensions. (1) The board may cancel a recipient's partial pension resulting from a permanent, total disability if:

(a) the board determines that the recipient is no longer permanently and totally disabled as provided in 19-17-408;

(b) the recipient refuses to submit to a medical examination under 19-17-408; or

(c) the recipient engages in a gainful occupation during the previous year and the compensation earned by him in that year exceeds $5,500.

(2) The cancellation of a pension under this section does not prejudice any right of a firefighter to other pension benefits payable under the Volunteer Firefighters' Compensation Act.

(3) If a former recipient's earnings in any year after the cancellation of his pension under subsection (1)(c) are less than $5,500, his pension must be reinstated.

History: En. Sec. 3, Ch. 177, L. 1981; Sec. 19-12-409, MCA 1991; redes. 19-17-409 by Code Commissioner, 1993.

Part 5

Disability and Death Benefits

19-17-501. Eligibility for disability and death benefits. (1) To qualify for benefits under 19-17-504, a firefighter must, at the time the injury or sickness for which benefits are claimed was incurred, have been an enrolled active member of a fire company not covered by workers' compensation insurance.

(2) To qualify for benefits under 19-17-505, a firefighter must, at the time of death, have been an enrolled active member of a fire company.

History: En. Sec. 4, Ch. 65, L. 1935; re-en. Sec. 5158.4, R.C.M. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973; amd. Sec. 1, Ch. 48, L. 1975; amd. Sec. 1, Ch. 233, L. 1975; amd. Sec. 22, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2023(1); amd. Sec. 3, Ch. 129, L. 1991; Sec. 19-12-501, MCA 1991; redes. 19-17-501 by Code Commissioner, 1993.

19-17-502. Procedure for claiming disability benefits. (1) A firefighter claiming benefits under 19-17-504 must file his claim with the board on a form to be provided by the board. The claim must be verified by the claimant, the attending physician or surgeon and nurse, if any, and the person in charge of the hospital, if the claimant was confined. The claim must be filed with the board within 1 year from the date of disability.

(2) The claim must contain:

(a) the name and address of the claimant;

(b) the date, place, and manner of incurring of disability;

(c) the name and address of the attending physician or surgeon and/or nurse, if any;

(d) the dates of confinement, if confined, or if not confined, the dates of attendance by a physician or surgeon and the dates of attendance by a nurse;

(e) the affidavit of the attending physician or surgeon as to the nature of the disability, the number and dates of visits, and the charges;

(f) if confined in a hospital, the affidavit of a person in charge stating the nature of the disability, the dates of confinement, and the expenses incurred while so confined;

(g) the affidavit of the chief or secretary of the fire company stating that the fire company was duly organized under the laws of Montana in an unincorporated town or village, that the claimant was, at the date of disability, an active enrolled member of the company, and that the disability was incurred in the line of duty as defined in 19-17-105;

(h) the affidavit of the nurse stating the nature of the disability, the dates of attendance, and the charges for services.

History: En. Sec. 5, Ch. 65, L. 1935; re-en. Sec. 5158.5, R.C.M. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971; amd. Sec. 23, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2024(1); amd. Sec. 3, Ch. 49, L. 1983; amd. Sec. 11, Ch. 57, L. 1983; Sec. 19-12-502, MCA 1991; redes. 19-17-502 by Code Commissioner, 1993.

19-17-503. Procedure for claiming death benefit. Anyone claiming the benefit provided for in 19-17-505 must file his claim with the board upon a form to be provided by the board, in accordance with such rules as the board may make.

History: En. 11-2024.1 by Sec. 24, Ch. 157, L. 1977; R.C.M. 1947, 11-2024.1; amd. Sec. 12, Ch. 57, L. 1983; Sec. 19-12-503, MCA 1991; redes. 19-17-503 by Code Commissioner, 1993.

19-17-504. Disability benefits. (1) Each member of a fire company is entitled to receive compensation for disability incurred while in the performance of his duties as a firefighter, as defined in 19-17-105, when the disability necessitates the services of a physician or surgeon, whether the member is confined or not. The compensation shall equal the amount of the member's necessary and reasonable medical expenses resulting directly from the disability and incurred within 36 months from the date of the injury which caused the disability. The total compensation may not exceed $25,000.

(2) When an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall order that an artificial member be furnished. The expense of furnishing an artificial member may not exceed $1,500. The artificial member so furnished shall be replaced every 5 years, if necessary.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch.

80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; R.C.M. 1947, 11-2022(1), (2); amd. Sec. 4, Ch. 49, L. 1983; amd. Sec. 13, Ch. 57, L. 1983; Sec. 19-12-504, MCA 1991; redes. 19-17-504 by Code Commissioner, 1993.

19-17-505. Death benefit. To aid in defraying the funeral expenses of a firefighter covered under this chapter whose death occurs in the line of duty, an amount not to exceed the actual necessary and reasonable expenses or $1,500, whichever is less, shall be allowed.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(3); Sec. 19-12-505, MCA 1991; redes. 19-17-505 by Code Commissioner, 1993.

19-17-506. Payment of disability and death benefits. When a claim under 19-17-504 or 19-17-505 is received by the board and is found to be in compliance with 19-17-502 or, in the case of a claim under 19-17-505, with 19-17-503, the board must order the allowance thereof and pay it by warrants drawn upon the volunteer firefighters' fund to the order of the attending physician or surgeon, attending nurse, and hospital or the provider of funeral services, as applicable.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(1); amd. Sec. 14, Ch. 57, L. 1983; Sec. 19-12-506, MCA 1991; redes. 19-17-506 by Code Commissioner, 1993.

CHAPTER 18

FIREFIGHTERS' RETIREMENT

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Part 1
General Provisions

19-18-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Association" means the fire department relief association provided for in 19-18-102.

(2) "Disability and pension fund" or "fund" means the fund provided for in 19-18-105.

(3) "Fire department" includes all fire departments, consisting of paid, part-paid, or volunteer firefighters or any combination thereof, recognized by the city or town council of an incorporated city or town of this state.

(4) "Incorporated city or town" includes county seats whether incorporated or not.

(5) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities or subsequent districts created for urban fire protection services.

History: (1) thru (4)En. 11-1910.1 by Sec. 1, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1910.1, R.C.M. 1947; (5)En. 11-1910.2 by Sec. 2, Ch. 489, L. 1977; Sec. 11-1910.2, R.C.M. 1947; R.C.M. 1947, 11-1910.1, 11-1910.2; Sec. 19-11-101, MCA 1991; redes. 19-18-101 by Code Commissioner, 1993.

19-18-102. Formation of fire department relief association — membership. (1) The confirmed members of a fire department, as defined in 19-18-101, may form a local association to be known as the fire department relief association of the city or town of .... (naming the city or town). When an association is formed, it shall be incorporated under the laws of this state. No one who is serving as a substitute, who is on probation, or who has not been confirmed as a member of the fire department is eligible for membership in the association.

(2) An association may only be formed and incorporated if:

(a) its formation is authorized by subsection (1); and

(b) the fire department has firefighting equipment in serviceable condition which has a value of $750 or more.

History: En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R.C.M. 1921; amd. Sec. 11, Ch. 58, L. 1927; re-en. Sec. 5129, R.C.M. 1935; amd. Sec. 7, Ch. 157, L. 1977; R.C.M. 1947, 11-1922(1), (2); Sec. 19-11-102, MCA 1991; redes. 19-18-102 by Code Commissioner, 1993.

19-18-103. Officers of association. When an association is formed, the members shall elect officers by a majority vote. The officers shall be a president, a secretary, a treasurer, and five members to serve on the board of trustees. After the incorporation of an association, the officers shall be elected annually on or before April 15. The members may elect the city or town treasurer ex officio treasurer of the association by a majority vote.

History: En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R.C.M. 1921; amd. Sec. 11, Ch. 58, L. 1927; re-en. Sec. 5129, R.C.M. 1935; amd. Sec. 7, Ch. 157, L. 1977; R.C.M. 1947, 11-1922(3); Sec. 19-11-103, MCA 1991; redes. 19-18-103 by Code Commissioner, 1993.

19-18-104. Board of trustees of association. A board of trustees of such fire department relief association shall be created to consist of seven members:

(1) the president of the fire department relief association and the chief of the fire department, if an active member of the association, shall be ex officio members; and

(2) five members to be elected by the members of such association at the annual election, to be held on or before April 15 of each year.

History: En. Sec. 4, Ch. 71, L. 1907; Sec. 3337, Rev. C. 1907; re-en. Sec. 5120, R.C.M. 1921; amd. Sec. 4, Ch. 58, L. 1927; R.C.M. 1947, 11-1913; Sec. 19-11-104, MCA 1991; redes. 19-18-104 by Code Commissioner, 1993.

19-18-105. Establishment of disability and pension fund. A fund to be known as the "disability and pension fund" of the fire department relief association of the city or town shall be established and maintained in every city or town where the fire department has formed or hereafter forms an association under 19-18-102.

History: En. Sec. 1, Ch. 71, L. 1907; Sec. 3334, Rev. C. 1907; re-en. Sec. 5117, R.C.M. 1921; amd. Sec. 1, Ch. 58, L. 1927; re-en. Sec. 5117, R.C.M. 1935; amd. Sec. 2, Ch. 157, L. 1977; R.C.M. 1947, 11-1910(1); Sec. 19-11-105, MCA 1991; redes. 19-18-105 by Code Commissioner, 1993.

19-18-106. Transfer of money into fund by city treasurer. Whenever a fire department relief association has been formed and the treasurer of the association has furnished the bond required by 19-18-202, the city treasurer shall pay to the treasurer of the association all money held by the city treasurer to the credit of the disability and pension fund, taking a proper receipt therefor. Thereafter, the city treasurer shall, as moneys are received by him for the credit of the fund or association, turn the same over to the treasurer of the association, taking proper receipts therefor.

History: En. Sec. 7, Ch. 129, L. 1911; re-en. Sec. 5131, R.C.M. 1921; amd. Sec. 13, Ch. 58, L. 1927; re-en. Sec. 5131, R.C.M. 1935; amd. Sec. 9, Ch. 157, L. 1977; R.C.M. 1947, 11-1924; Sec. 19-11-106, MCA 1991; redes. 19-18-106 by Code Commissioner, 1993.

19-18-107. Retention of firefighters' rights when local government consolidated. A firefighter who has vested rights in a disability and pension fund maintains prior vested rights in the fund upon its transfer to a consolidated county municipality. A disability and pension fund established as required by law in a city or town of the county prior to the election and qualification of a commission under Title 7 or other acts of consolidation or disincorporation shall be continued as one such fund for the fire department of the municipality, subject, however, to the prior vested rights of firefighters employed by any fire department established as required by law in a city or town of the county prior to the election and qualification of a commission under Title 7 or other acts of consolidation or disincorporation. The board of trustees of the disability and pension fund shall continue as provided in 19-18-104. Except as provided in this section, the disability and pension fund shall be continued and administered in the manner prescribed by law for such funds.

History: En. Sec. 83, Ch. 121, L. 1923; re-en. Sec. 5520.84, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1961; amd. Sec. 1, Ch. 34, L. 1975; amd. Sec. 31, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3524(2); Sec. 19-11-107, MCA 1991; redes. 19-18-107 by Code Commissioner, 1993.

Part 2

Management and Protection of Fund

19-18-201. Management of fund. Except as otherwise provided in this chapter, the association and its board of trustees have full charge, management, and control of the disability and pension fund. The fund shall be kept separate from other funds and shall be held by the treasurer of the association.

History: En. Sec. 13, Ch. 129, L. 1911; re-en. Sec. 5137, R.C.M. 1921; re-en. Sec. 5137, R.C.M. 1935; amd. Sec. 17, Ch. 157, L. 1977; Sec. 11-1930, R.C.M. 1947; En. Sec. 1, Ch. 71, L. 1907; Sec. 3334, Rev. C. 1907; re-en Sec 5117, R.C.M. 1921; amd. Sec. 1, Ch. 58, L. 1927; re-en. Sec. 5117, R.C.M. 1935; amd. Sec. 2, Ch. 157, L. 1977; Sec. 11-1910, R.C.M 1947; R.C.M. 1947, 11-1910(2), 11-1930; Sec. 19-11-201, MCA 1991; redes. 19-18-201 by Code Commissioner, 1993.

19-18-202. Treasurer's bond. No treasurer of an association may enter upon his duties until he has given the association a sufficient bond of not less than 50% of the amount of the cash funds and securities of the association for the faithful performance of his duties according to law. The amount of the bond shall be approved by the association and may not exceed $25,000. The bond shall be paid for by the association. If the city or town treasurer has been elected ex officio treasurer of the association, his official bond will cover the faithful discharge of his duties as such.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(2); Sec. 19-11-202, MCA 1991; redes. 19-18-202 by Code Commissioner, 1993.

19-18-203. Use of disability and pension fund. The fund may not be used for any purpose other than investment, as provided in part 4 of this chapter, and the payment of the following:

(1) a service pension to a member who, by reason of service, has become entitled to a service pension;

(2) a pension to a member who has become permanently maimed or disabled;

(3) a benefit or allowance to a member who has suffered a permanent disabling injury;

(4) a benefit or allowance to a member who has contracted a permanent disabling sickness;

(5) a benefit, not exceeding $750, to defray the funeral expenses of a member;

(6) benefits to the surviving spouse, child, or children of a deceased member as provided in this chapter;

(7) premiums on a blanket policy of insurance covering the members of the fire department and providing for payment of compensation in case of the death of or injury to any such member;

(8) the return of employee contributions as provided in this chapter.

History: En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R.C.M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; re-en. Sec. 5135, R.C.M. 1935; amd. Sec. 8, Ch. 208, L. 1967; amd. Sec. 2, Ch. 47, L. 1975; amd. Sec. 6, Ch. 535, L. 1975; amd. Sec. 15, Ch. 157, L. 1977; R.C.M. 1947, 11-1928(1); amd. Sec. 65, Ch. 370, L. 1987; Sec. 19-11-203, MCA 1991; redes. 19-18-203 by Code Commissioner, 1993.

19-18-204. Review and report by board of trustees. The board of trustees of the association shall review the accounts of the association at least every 6 months and shall report the condition of them at the next regular meeting of the association.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(1); amd. Sec. 22, Ch. 489, L. 1991; Sec. 19-11-204, MCA 1991; redes. 19-18-204 by Code Commissioner, 1993.

19-18-205. Annual report of secretary and treasurer to association and state auditor. The secretary and treasurer of the association shall annually prepare a report of its receipts and expenditures for the preceding year in accordance with 2-7-503, showing to whom and for what purposes money has been expended. They shall file the report with the association, the department of commerce, and the state auditor. Money may not be paid to the treasurer of the association until the report is filed.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(1); amd. Sec. 23, Ch. 489, L. 1991; Sec. 19-11-205, MCA 1991; redes. 19-18-205 by Code Commissioner, 1993.

19-18-206. Authority of department of commerce — mishandling of funds. (1) All of the financial books and accounts of the association are subject at all times to examination by the department of commerce.

(2) When a complaint is made to the department of commerce that any money paid to the treasurer of the association has been or is being spent for an unauthorized purpose and, upon examination, the money is found to have been spent contrary to the authority given, the department shall so report to the governor, upon whose directions to the state auditor no further warrants may be issued to the association treasurer until the misspent money has been returned.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(3)(a), (3)(b); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; Sec. 19-11-206, MCA 1991; redes. 19-18-206 by Code Commissioner, 1993.

19-18-207. Theft from funds. Any person who fraudulently appropriates any money or other valuable thing belonging to the disability and pension fund of any fire department relief association or who takes part in or in any manner aids in any scheme or plan whereby the fund or association is defrauded out of any of the money in the fund is guilty of theft and upon conviction thereof shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years, by a fine of not more than $50,000, or by both such fine and imprisonment.

History: En. Sec. 8, Ch. 71, L. 1907; Sec. 3341, Rev. C. 1907; re-en. Sec. 5124, R.C.M. 1921; amd. Sec. 7, Ch. 58, L. 1927; re-en. Sec. 5124, R.C.M. 1935; amd. Sec. 44, Ch. 359, L. 1977; R.C.M. 1947, 11-1916; amd. Sec. 7, Ch. 198, L. 1981; Sec. 19-11-207, MCA 1991; redes. 19-18-207 by Code Commissioner, 1993.

19-18-208. Protection of fund as to bank depository securities. The cash in the disability and pension fund shall have the same protection as to depository securities furnished by banks as the other funds of the city or town.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(part); Sec. 19-11-208, MCA 1991; redes. 19-18-208 by Code Commissioner, 1993.

Part 3 reserved

Part 4

Management of Association — Investment of Fund

19-18-401. Management of association. The management of the fire department relief associations and of fire department relief associations of pure volunteer fire departments in first- and second-class cities is vested in the boards of trustees, except as provided in 19-18-402 and 19-18-403.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(a); amd. Sec. 2, Ch. 270, L. 1981; amd. Sec. 54, Ch. 566, L. 1981; Sec. 19-11-401, MCA 1991; redes. 19-18-401 by Code Commissioner, 1993.

19-18-402. Investment of fund by trustees. (1) Subject to the provisions of 19-18-403, when so directed by a majority vote of the members of the association, the board of trustees may invest the surplus money in the fund or any part thereof in:

(a) time or saving deposits in a solvent bank, building and loan association, savings and loan association, or credit union operating in the county where the city or town is located;

(b) bonds or other securities of the United States government; or

(c) general obligation bonds or warrants of any state, county, or city.

(2) At the time of purchase the investments must be stamped in boldface type substantially as follows: "property of the .... fire department relief association and negotiable only upon the order of the board of trustees of such association".

History: **En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(b); amd. Sec. 1, Ch. 393, L. 1979; amd. Sec. 15, Ch. 421, L. 1985; Sec. 19-11-402, MCA 1991; redes. 19-18-402 by Code Commissioner, 1993.**

19-18-403. Investment of fund by board of investments. (1) Whenever the average yield on investments of public retirement funds under the board of investments exceeds by 1% in any fiscal year the average yield on investments of the fund made pursuant to 19-18-402, the surplus money in the fund shall be remitted to the state treasurer for investment under the direction of the board of investments as is provided in 17-6-204. The department of commerce shall advise the association of the current yield on investments of public retirement funds.

(2) As used in subsection (1), "surplus money" means the excess over the greater of the following:

(a) 1 1/2 times the monthly benefit paid in the preceding month; or

(b) $5,000.

History: **En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(c); amd. Sec. 2, Ch. 393, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 55, Ch. 566, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; Sec. 19-11-403, MCA 1991; redes. 19-18-403 by Code Commissioner, 1993.**

Part 5

Contributions to Fund

19-18-501. Contributions to fund. The disability and pension fund shall consist of:

(1) all bequests, fees, gifts, emoluments, donations, or money from other sources given or paid to the fund, except as otherwise designated by the donor;

(2) a monthly fee which shall be paid into the fund by each paid or part-paid member of the association amounting to 6% of the member's regular monthly salary;

(3) the proceeds of the tax levy provided for in 19-18-503 and 19-18-504;

(4) all moneys received from the state, including those provided for in 19-18-512; and

(5) all interest and other income earned from the investment of the fund.

History: En. Sec. 2, Ch. 71, L. 1907; Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R.C.M. 1921; amd. Sec. 2, Ch. 58, L. 1927; re-en. Sec. 5118, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967; amd. Sec. 3, Ch. 535, L. 1975; amd. Sec. 3, Ch. 157, L. 1977; amd. Sec. 1, Ch. 484, L. 1977; R.C.M. 1947, 11-1911(1); Sec. 19-11-501, MCA 1991; redes. 19-18-501 by Code Commissioner, 1993.

19-18-502. Refund of firefighter's contribution. A firefighter is entitled to a refund, in a lump sum and without interest, of all his monthly contributions to the fund, within 60 days after his permanent separation from service in the fire department, except for separation by reason of retirement, death, or disability which would otherwise qualify him or his surviving spouse or children to receive benefits or an allowance from the association. A firefighter who is eligible to receive a partial service pension under 19-18-603 may either elect to take the refund provided for in this section or elect to receive the partial pension.

History: En. Sec. 2, Ch. 71, L. 1907; Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R.C.M. 1921; amd. Sec. 2, Ch. 58, L. 1927; re-en. Sec. 5118, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967; amd. Sec. 3, Ch. 535, L. 1975; amd. Sec. 3, Ch. 157, L. 1977; amd. Sec. 1, Ch. 484, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1911(2); Sec. 19-11-502, MCA 1991; redes. 19-18-502 by Code Commissioner, 1993.

19-18-503. Special tax levy for fund required. (1) The purpose of this section is to provide a means by which each disability and pension fund may be maintained at a level equal to 4% of the taxable valuation of all taxable property within the limits of the city or town.

(2) Whenever the fund contains less than 4% of the taxable valuation of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a special tax as provided in 19-18-504. The special tax must be collected as other taxes are collected and, when so collected, must be paid into the disability and pension fund.

(3) If a special tax for the disability and pension fund is levied by a third-class city or town using the all-purpose mill levy, the special tax levy must be made in addition to the all-purpose levy.

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R.C.M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; re-en. Sec. 5119, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967; amd. Sec. 1, Ch. 170, L. 1974; amd. Sec. 4, Ch. 157, L. 1977; R.C.M. 1947, 11-1912(1); amd. Sec. 59, Ch. 614, L. 1981; amd. Sec. 2, Ch. 372, L. 1983; amd. Sec. 1, Ch. 606, L. 1989; Sec. 19-11-503, MCA 1991; redes. 19-18-503 by Code Commissioner, 1993.

19-18-504. Amount of special tax levy. Whenever the fund contains an amount which is less than 4% of the taxable valuation of all taxable property in the city or town, the city council shall levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property within the city or town.

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R.C.M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; re-en. Sec. 5119, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967; amd. Sec. 1, Ch. 170, L. 1974; amd. Sec. 4, Ch. 157, L. 1977; R.C.M. 1947, 11-1912(2); amd. Sec. 56, Ch. 566, L. 1981; amd. Sec. 60, Ch. 614, L. 1981; amd. Sec. 2, Ch. 606, L. 1989; Sec. 19-11-504, MCA 1991; redes. 19-18-504 by Code Commissioner, 1993.

19-18-505 through 19-18-510 reserved.

19-18-511. Annual report of clerks of cities having fire departments. On or before April 1 annually, the clerk of every city having an organized fire department or a partly paid or volunteer department shall file with the commissioner of insurance of this state his certificate stating such fact, the system of water supply in use in such fire department, the number of its organized companies, steam, hand, or other engines, hook-and-ladder trucks, hose-carts, and feet of hose in actual use, and such other facts as the commissioner may require.

History: En. Sec. 1, Ch. 129, L. 1911; re-en. Sec. 5125, R.C.M. 1921; re-en. Sec. 5125, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1975; R.C.M. 1947, 11-1917; Sec. 19-11-511, MCA 1991; redes. 19-18-511 by Code Commissioner, 1993.

19-18-512. State auditor to pay association out of insurance premium taxes. (1) After the end of the fiscal year, the state auditor shall issue and deliver the warrant described in this subsection to the treasurer of every city or town which has a fire department relief association entitled by law to receive payments. The warrant shall be for the use and benefit of the association. It shall be for an amount equal to 1 ½ mills of the total taxable value of the city or town and shall be paid out of the premium taxes on insurance risks enumerated in subsection (3) collected by the state auditor. The payment is statutorily appropriated as provided in 17-7-502.

(2) If the payment provided for in subsection (1) is less than $100, an additional payment shall be made from the same tax moneys so that the total amount received is $100.

(3) The risks referred to in subsection (1) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of any vehicle.

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915; re-en. Sec. 5127, R.C.M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; re-en. Sec. 5127, R.C.M. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963; amd. Sec. 4, Ch. 208, L. 1967; amd. Sec. 1, Ch. 203, L. 1969; amd. Sec. 1, Ch. 301, L. 1974; amd. Sec. 1, Ch. 227, L. 1975; amd. Sec. 2, Ch. 228, L. 1975; amd. Sec. 1, Ch. 264, L. 1975; amd. Sec. 6, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; amd. Sec. 27, Ch. 566, L. 1977; R.C.M. 1947, 11-1919; amd. Sec. 1, Ch. 296, L. 1979; amd. Sec. 4, Ch. 250, L. 1981; amd. Sec. 57, Ch. 566, L. 1981; amd. Sec. 25, Ch. 703, L. 1985; Sec. 19-11-512, MCA 1991; redes. 19-18-512 by Code Commissioner, 1993.

19-18-513. Transfer of premium taxes to state treasury. The state auditor shall estimate the portion of premium taxes needed to make the payments required by this chapter and shall pay an amount equal to the estimate into the state treasury, to the credit of the state special revenue fund. The payment is statutorily appropriated as provided in 17-7-502. Any balances remaining after such payments have been ordered shall be transferred to the general fund.

History: En. Sec. 2, Ch. 15, L. 1935; re-en. Sec. 5127.1, R.C.M. 1935; amd. Sec. 69, Ch. 147, L. 1963; amd. Sec. 2, Ch. 366, L. 1974; R.C.M. 1947, 11-1920; amd. Sec. 58, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 26, Ch. 703, L. 1985; Sec. 19-11-513, MCA 1991; redes. 19-18-513 by Code Commissioner, 1993.

19-18-514. State treasurer to pay warrants. The state treasurer is hereby authorized and directed, upon the presentation to him of a warrant drawn pursuant to this chapter, to pay to the treasurer of the city or town, out of moneys in the state special revenue fund dedicated for such purpose, the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association.

History: En. Sec. 4, Ch. 129, L. 1911; re-en. Sec. 5128, R.C.M. 1921; amd. Sec. 10, Ch. 58, L. 1927; re-en. Sec. 5128, R.C.M. 1935; amd. Sec. 70, Ch. 147, L. 1963; R.C.M. 1947, 11-1921; amd. Sec. 2, Ch. 296, L. 1979; amd. Sec. 59, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; Sec. 19-11-514, MCA 1991; redes. 19-18-514 by Code Commissioner, 1993.

Part 6
Benefits

19-18-601. Benefits the association may provide. Every fire department relief association may allow to its members benefits for the following causes, as provided by law:

(1) a service pension to a member who, by reason of service, has become entitled to a service pension;

(2) to a member who has become maimed or disabled for life in line of duty;

(3) to a member who has suffered injury in line of duty;

(4) to a member who has contracted sickness in line of duty;

(5) funeral expenses of a member;

(6) pensions to the surviving spouse, orphan, or orphans of a deceased member.

History: En. Sec. 7, Ch. 71, L. 1907; Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R.C.M. 1921; amd. Sec. 6, Ch. 58, L. 1927; re-en. Sec. 5123, R.C.M. 1935; amd. Sec. 3, Ch. 208, L. 1967; amd. Sec. 4, Ch. 535, L. 1975; R.C.M. 1947, 11-1915(part); Sec. 19-11-601, MCA 1991; redes. 19-18-601 by Code Commissioner, 1993.

19-18-602. Service pension. (1) Each association shall pay, out of its disability and pension fund, a service pension to each of its members who elects to retire from active service after having completed 20 years or more of active duty and has reached the age of 50 years as a fully paid member of a paid or partly paid and partly volunteer fire department of the city or town in which the association was formed. The pension shall be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years shall receive the pension provided for in subsection (1) increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department. No member is eligible to receive a service pension prior to attaining the age of 50 years.

(3) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary, excluding overtime and payments in lieu of sick leave and annual leave, paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200. In the case of volunteer firefighters, the pension may not exceed $150 a month.

(4) As of July 1, 1977, a member is not eligible to receive a service pension under this section unless he is making a monthly contribution to the disability and pension fund, as required by 19-18-501, and is on active duty as a fully paid member of a fire department when he reaches the age of 50 years.

(5) A member of a pure volunteer fire department who has served 20 years or more as an active member of the fire department is entitled to the benefits provided for in this chapter regardless of his age. A member of a pure volunteer fire department who has completed 10 years' service as an active member of the fire department but who is prevented from completing 20 years' service by dissolution or discontinuance of his volunteer fire department, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control may nevertheless qualify for a partial or reduced pension in an amount and to the extent determined by the board of trustees of the association, regardless of his age.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R.C.M. 1921; amd. Sec. 14, Ch. 58, L. 1927; re-en. Sec. 5132, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 194, L. 1949; amd. Sec. 1, Ch. 56, L. 1963; amd. Sec. 5, Ch. 208, L. 1967; amd. Sec. 1, Ch. 267, L. 1973; amd. Sec. 1, Ch. 36, L. 1974; amd. Sec. 1, Ch. 163, L. 1974; amd. Sec. 1, Ch. 299, L. 1974; amd. Sec. 1, Ch. 58, L. 1977; amd. Sec. 10, Ch. 157, L. 1977; amd. Sec. 3, Ch. 484, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1925; amd. Sec. 1, Ch. 446, L. 1983; Sec. 19-11-602, MCA 1991; redes. 19-18-602 by Code Commissioner, 1993.

19-18-603. Partial service pension. (1) A member of a fire department relief association is eligible to receive a partial service pension if he:

(a) has completed at least 10 years of active duty as a fully paid member of a fire department but has not both completed 20 years of service and attained age 50 as an active firefighter;

(b) is permanently separated from service on or after July 1, 1977;

(c) does not qualify for a disability pension under 19-18-604; and

(d) does not receive a refund of his contributions under 19-18-502.

(2) The right to receive the pension vests upon the firefighter's permanent separation from service, but the payments may not commence until the date he would have both reached his 50th birthday and completed 20 years of service as a member of a fire department had his active duty not been terminated.

(3) The pension shall be paid out of the disability and pension fund and shall consist of monthly payments in an amount equal to the number of years of the firefighter's service divided by the number of years of service the firefighter would have had if he had remained in active duty as a member of a fire department until the date he would have both attained age 50 and completed 20 years of service, multiplied by one-half of the sum last received by the firefighter as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(4) If the firefighter dies after he is permanently separated from service and before he both reaches the age of 50 years and would have completed 20 years of service as an active member of a fire department, the payments prescribed in subsection (3) shall be made to the surviving spouse commencing on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active member of a fire department and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or the surviving spouse dies or remarries and if the firefighter leaves one or more children who have not reached the age of 18 years, the children shall receive the payments until the youngest reaches the age of 18 years.

(5) If the firefighter dies after he both reaches the age of 50 years and would have completed 20 years of service as an active member of a fire department, the payments shall be made to the surviving spouse or children as provided in subsection (4).

(6) The pension escalation provisions of 19-18-602 do not apply to pensions received under this section.

History: En. 11-1925.1 by Sec. 2, Ch. 484, L. 1977; R.C.M. 1947, 11-1925.1; amd. Sec. 29, Ch. 114, L. 1979; Sec. 19-11-603, MCA 1991; redes. 19-18-603 by Code Commissioner, 1993.

19-18-604. Disability pension. (1) Each association shall pay a disability pension, out of its disability and pension fund, to each of its members who has become disabled by reason of sickness or injury. The pension shall be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services to the fire department of the city or town in which the association was formed.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years shall receive the pension provided for in subsection (1) increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(3) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200. In the case of volunteer firefighters, the disability pension may not exceed $125 a month.

History: **En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R.C.M. 1921; amd. Sec. 15, Ch. 58, L. 1927; re-en. Sec. 5133, R.C.M. 1935; amd. Sec. 2, Ch. 73, L. 1939; amd. Sec. 2, Ch. 98, L. 1945; amd. Sec. 2, Ch. 56, L. 1963; amd. Sec. 6, Ch. 208, L. 1967; amd. Sec. 2, Ch. 267, L. 1973; amd. Sec. 2, Ch. 36, L. 1974; amd. Sec. 2, Ch. 299, L. 1974; amd. Sec. 1, Ch. 47, L. 1975; amd. Sec. 11, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1926; amd. Sec. 2, Ch. 446, L. 1983; Sec. 19-11-604, MCA 1991; redes. 19-18-604 by Code Commissioner, 1993.**

19-18-605. Pensions to surviving spouses and children. (1) Each association shall pay, out of its disability and pension fund, a monthly pension to the surviving spouse or children of a deceased member of the association who on the date of his death was an active member of the fire department in the city or town in which the association was formed, who had elected to retire from active service in the fire department and receive a service pension as provided for by 19-18-602, or who, prior to death, had suffered a sickness or injury and was receiving or was qualified to receive a disability pension as provided by 19-18-604. The pension shall be equal to one-half of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services rendered as an active member of the fire department in the city or town in which the association was formed.

(2) Effective July 1, 1974, if the deceased member had completed 20 years of service and had elected to serve additional years, the pension provided for in subsection (1) shall be increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for his services as an active member of the fire department.

(3) The monthly pension paid to the surviving spouse or children of an active member who dies after July 1, 1973, or an active member who elects to retire after July 1, 1973, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to the surviving spouse or children of an active member who died prior to July 1, 1974, or who elected to retire before July 1, 1974, must be at least $200. In the case of a volunteer firefighter, the pension paid to a surviving spouse or children may not exceed the amount provided for a service pension for a volunteer firefighter under 19-18-602(3).

(4) A pension may be paid to the surviving spouse only so long as such spouse remains unmarried. A surviving spouse is not entitled to a pension under this section if the marriage was entered into after the firefighter had elected to retire from active service and had begun to receive a service pension as provided for by 19-18-602 or if the marriage was entered into after the firefighter had qualified for and had begun to receive a disability pension as provided for by 19-18-604. The pension provided for in this section may not be paid to the children of deceased firefighters after they have attained the age of 18.

History: **En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R.C.M. 1921; amd. Sec. 16, Ch. 58, L. 1927; re-en. Sec. 5134, R.C.M. 1935; amd. Sec. 3, Ch. 73, L. 1939; amd. Sec. 3, Ch. 98, L. 1945; amd. Sec. 3, Ch. 56, L. 1963; amd. Sec. 7, Ch. 208, L. 1967; amd. Sec. 3, Ch. 267, L. 1973; amd. Sec. 3, Ch. 36, L. 1974; amd. Sec. 3, Ch. 299, L. 1974; amd. Sec. 5, Ch. 535, L.**

1975; amd. Sec. 12, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927; amd. Sec. 1, Ch. 82, L. 1987; Sec. 19-11-605, MCA 1991; redes. 19-18-605 by Code Commissioner, 1993.

19-18-606. Supplement to certain pensions. (1) In addition to the taxes on premiums required by law to be paid by each insurer doing business in this state that is authorized to effect insurance on risks enumerated in 19-18-512, there is a tax of 1 ½% on the fire portion of the direct premiums received during the calendar year of 1989 and each succeeding year, with allowance for cancellations and returned premiums. The insurance commissioner shall collect the tax during March of each year and deposit the moneys in the state special revenue fund. The proceeds of such tax are statutorily appropriated, as provided in 17-7-502, to the auditor, who shall pay claims as provided in subsection (2) of this section and 19-13-1006. If sufficient cash remains in the fund each year after the payment of claims as provided in subsection (2) of this section and 19-13-1006, the state auditor shall deposit any excess amount in the account provided for in 19-13-615.

(2) Effective January 1, 1976, each association shall pay to the firefighters retired before July 1, 1973, or their surviving spouses and children a monthly pension of not less than one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. In the case of volunteer firefighters, the pension may not exceed $75 per month. Distribution of the funds provided for this purpose under subsection (1) shall be made as follows:

(a) At the beginning of each fiscal year the treasurer of each association shall request and the state auditor shall issue from the state special revenue fund and deliver to the treasurer of the respective city or town an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding. The state auditor shall, at the same time, report to the treasurer of the appropriate association the amount of any payment delivered to the board of investments.

(b) The treasurer of a city or town receiving funds shall immediately disburse them to the treasurer of the respective association.

(c) The treasurer of the association shall utilize these funds to increase the monthly pension of retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the city or town for the preceding year.

History: En. 11-1927.2 by Sec. 1, Ch. 32, L. 1975; amd. Sec. 14, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927.2; amd. Sec. 3, Ch. 296, L. 1979; amd. Sec. 60, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 27, Ch. 703, L. 1985; amd. Sec. 1, Ch. 454, L. 1989; Sec. 19-11-606, MCA 1991; redes. 19-18-606 by Code Commissioner, 1993.

19-18-607. Payment of death benefits in absence of spouse or child. If a firefighter dies without leaving a surviving spouse or child, the association shall compute the total contributions made to the fund by the deceased member, and if the deceased member had designated a beneficiary in writing to the association, the association shall issue a warrant for the amount of the total contributions payable to that beneficiary. If the deceased member had not nominated a beneficiary, the contributions shall be paid to his estate.

History: En. Sec. 1, Ch. 276, L. 1973; amd. Sec. 13, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927.1; Sec. 19-11-607, MCA 1991; redes. 19-18-607 by Code Commissioner, 1993.

19-18-608 through 19-18-610 reserved.

19-18-611. Procedure — applying for and collecting benefits. (1) All applications for relief shall be referred to the board of trustees. All claims shall be referred to the board of trustees for allowance or disallowance, and claimant shall have the right to appeal to the association in the event the claim be disallowed.

(2) All claims shall be paid by warrant, duly authorized, drawn by the secretary and countersigned by the president of the association. On presentation of the warrant, the treasurer shall pay it out of the disability and pension fund.

History: (1)En. Sec. 7, Ch. 71, L. 1907; Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R.C.M. 1921; amd. Sec. 6, Ch. 58, L. 1927; re-en. Sec. 5123, R.C.M. 1935; amd. Sec. 3, Ch. 208, L. 1967; amd. Sec. 4, Ch. 535, L. 1975; Sec. 11-1915, R.C.M. 1947; (2)En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R.C.M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; re-en. Sec. 5135, R.C.M. 1935; amd. Sec. 8, Ch. 208, L. 1967; amd. Sec. 2, Ch. 47, L. 1975; amd. Sec. 6, Ch. 535, L. 1975; amd. Sec. 15, Ch. 157, L. 1977; Sec. 11-1928, R.C.M. 1947; R.C.M. 1947, 11-1915(part), 11-1928(2); Sec. 19-11-611, MCA 1991; redes. 19-18-611 by Code Commissioner, 1993.

19-18-612. Protection of benefits from legal process and taxation — nonassignability. (1) Any payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum so assigned.

(2) The first $3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation.

History: En. Sec. 12, Ch. 129, L. 1911; re-en. Sec. 5136, R.C.M. 1921; re-en. Sec. 5136, R.C.M. 1935; amd. Sec. 16, Ch. 157, L. 1977; R.C.M. 1947, 11-1929; amd. Sec. 30, Ch. 114, L. 1979; amd. Sec. 14, Ch. 823, L. 1991; Sec. 19-11-612, MCA 1991; redes. 19-18-612 by Code Commissioner, 1993.

CHAPTER 19

POLICE RETIREMENT — LOCAL FUNDS

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19-19-503. Death benefits.
19-19-504. Protection of benefits from legal process and taxation.
19-19-505. Withholding of group insurance premium from retirement benefit.
19-19-506. Supplement to certain pensions.

Part 1

General Provisions

19-19-101. Definition. Unless the context requires a different meaning, any reference to "municipality", "city", or "town" in this chapter includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

History: En. 11-1839.1 by Sec. 1, Ch. 489, L. 1977; R.C.M. 1947, 11-1839.1; Sec. 19-10-101, MCA 1991; redes. 19-19-101 by Code Commissioner, 1993.

Part 2

Management of Police Retirement Funds

19-19-201. Local boards of trustees of funds. (1) Each city or town which has a police retirement fund must have a board of trustees of such fund, except as provided in subsection (4).

(2) A board of trustees existing under subsection (1) must consist of the mayor, clerk, and attorney of the city or town and two members from the active list of police officers of the city or town.

(3) The two trustees who are also police officers shall serve terms of 2 years. They shall be selected by a majority vote of the members of the police department on the active list of the city or town. One shall be selected each year between May 1 and May 10, so that their terms are staggered. Immediately after the selection has been made, a certificate of election must be certified to the city clerk by the chairman and secretary of the meeting at which the selection was made.

(4) The board of trustees of the police retirement fund of a city which elects to participate in the municipal police officers' retirement system under 19-9-207 is abolished as of the time that the transfer of the cash and securities and the certification required by that section is completed. The functions of the board are transferred as of the date of the election to the department of administration and the board, as provided in the Municipal Police Officers' Retirement Act.

History: (1) thru (3)En. Sec. 12, Ch. 120, L. 1929; re-en. Sec. 5108.12, R.C.M. 1935; amd. Sec. 3, Ch. 224, L. 1977; Sec. 11-1828, R.C.M. 1947; (4)En. 82A-225, by Sec. 34, Ch. 456, L. 1977; Sec. 82A-225, R.C.M. 1947; R.C.M. 1947, 11-1828, 82A-225; amd. Sec. 15, Ch. 114, L. 1979; Sec. 19-10-201, MCA 1991; redes. 19-19-201 by Code Commissioner, 1993.

19-19-202. Limit on use of fund. (1) Except as provided in subsection (2), a police retirement fund may not be used for any purpose other than to make payments authorized by this chapter to members of the police department on the retired list and to make authorized investments.

(2) When a city or town no longer employs a police officer eligible to receive benefits paid from the city's or town's police retirement fund and when there are no retired police officers or beneficiaries eligible to receive benefits from the fund, the city or town shall dissolve the fund and pay to the state auditor, for deposit in the general fund, an amount proportional to the prior contributions made by the state under 19-19-305, as determined by the state auditor. Any remaining money in the fund must be transferred to the city or town general fund to be used by the city or town for any authorized city or town purpose.

History: En. Sec. 14, Ch. 120, L. 1929; re-en. Sec. 5108.14, R.C.M. 1935; amd. Sec. 5, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1830; amd. Sec. 16, Ch. 114, L. 1979; amd. Sec. 1, Ch. 460, L. 1985; amd. Sec. 64, Ch. 370, L. 1987; Sec. 19-10-202, MCA 1991; redes. 19-19-202 by Code Commissioner, 1993.

19-19-203. Investment of fund. (1) All money in the fund in excess of such an amount as is considered necessary from time to time to meet current payments to retired police officers shall be invested as hereinafter provided. All interest on money belonging to the fund from any source belongs to and must be paid into the fund.

(2) Whenever the money in the police retirement fund exceeds the greater of the following amounts, the city treasurer shall remit the excess to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided in 17-6-204:

(a) 1 1/2 times the monthly benefit paid in the preceding month; or

(b) $5,000.

(3) The funds deposited in the police retirement fund of a city or town after July 1, 1977, are limited to the investments in 17-6-211. However, these funds may be invested under the provisions of 17-6-204.

History: (1)En. Sec. 11, Ch. 120, L. 1929; re-en. Sec. 5108.11, R.C.M. 1935; Sec. 11-1827, R.C.M. 1947; (2)En. Sec. 13, Ch. 120, L. 1929; re-en. Sec. 5108.13, R.C.M. 1935; amd. Sec. 1, Ch. 84, L. 1971; amd. Sec. 1, Ch. 1, L. 1974; amd. Sec. 1, Ch. 128, L. 1974; amd. Sec. 16, Ch. 213, L. 1975; amd. Sec. 4, Ch. 224, L. 1977; Sec. 11-1829, R.C.M. 1947; (3)En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; Sec. 11-1836, R.C.M. 1947; R.C.M. 1947, 11-1827, 11-1829(2), (3), 11-1836(part); amd. Sec. 17, Ch. 114, L. 1979; amd. Sec. 3, Ch. 395, L. 1981; Sec. 19-10-203, MCA 1991; redes. 19-19-203 by Code Commissioner, 1993.

19-19-204. Trustees' report to state auditor. The board of trustees of each police retirement fund shall on or before April 1 of each year report to the state auditor as to the financial condition of its fund.

History: En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; R.C.M. 1947, 11-1836(part); amd. Sec. 18, Ch. 114, L. 1979; Sec. 19-10-204, MCA 1991; redes. 19-19-204 by Code Commissioner, 1993.

19-19-205. Actuarial valuation of police retirement fund. (1) The city treasurer shall submit to the department of administration before October 1 of each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the city's police retirement fund. The valuation shall consider the actuarial soundness of the police retirement fund for the 2 preceding fiscal years.

(2) The valuation is to be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. The state auditor shall make payment to the actuary designated in the request. The payment is statutorily appropriated as provided in 17-7-502.

History: En. Sec. 13, Ch. 120, L. 1929; re-en. Sec. 5108.13, R.C.M. 1935; amd. Sec. 1, Ch. 84, L. 1971; amd. Sec. 1, Ch. 1, L. 1974; amd. Sec. 1, Ch. 128, L. 1974; amd. Sec. 16, Ch. 213, L. 1975; amd. Sec. 4, Ch. 224, L. 1977; R.C.M. 1947, 11-1829(1); amd. Sec. 1, Ch. 64, L. 1979; amd. Sec. 19, Ch. 114, L. 1979; amd. Sec. 22, Ch. 703, L. 1985; Sec. 19-10-205, MCA 1991; redes. 19-19-205 by Code Commissioner, 1993.

Part 3

Contributions to Funds

19-19-301. City's contribution to fund. Each city, other than one of the first or second class, which has a police retirement fund and which did not elect to join the statewide police reserve fund provided for in Chapter 335, Laws of 1974, and has not elected to participate in the plan under 19-9-207 shall deposit in its fund monthly an amount equal to 11% of the total salaries for the preceding month paid to active police officers of such city, exclusive of overtime and payments in lieu of sick leave and annual leave. If the demand against a city for deposits in its fund is such that it cannot be met within the general taxing authority of the city, an additional levy not to exceed 3 mills may be made until the general taxing authority is sufficient to meet the demand.

History: En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; re-en. Sec. 5108.7, R.C.M. 1935; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949; amd. Sec. 1, Ch. 8, L. 1959; amd. Sec. 6, Ch. 335, L. 1974; amd. Sec. 1, Ch. 224, L. 1977; amd. Sec. 35, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1823; amd. Sec. 20, Ch. 114, L. 1979; Sec. 19-10-301, MCA 1991; redes. 19-19-301 by Code Commissioner, 1993.

19-19-302. Officer's contribution deducted from salary. The treasurer of an incorporated city which has a police retirement fund shall retain from the monthly salary of each police officer on the active list a sum equal to 6% of his monthly compensation for his services as a police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave. The monthly deduction from the salaries of police officers must be paid into the city's police retirement fund for the purpose of paying the salaries of police officers on the retired list.

History: En. Sec. 9, Ch. 100, L. 1927; amd. Sec. 9, Ch. 120, L. 1929; amd. Sec. 1, Ch. 54, L. 1953; amd. Sec. 7, Ch. 335, L. 1974; amd. Sec. 2, Ch. 224, L. 1977; amd. Sec. 36, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1825; amd. Sec. 21, Ch. 114, L. 1979; Sec. 19-10-302, MCA 1991; redes. 19-19-302 by Code Commissioner, 1993.

19-19-303. Refund of officer's contribution. A police officer whose service with the city has been discontinued by other than death or placement upon the retired list shall be entitled to the return to him of the amounts paid to the fund through deductions from his salary. If he has 10 years or more of service, the amount paid shall include regular interest on such amounts. If he has less than 10 years of service, he shall receive only the amount paid through such salary deductions, without interest.

History: En. 11-1847 by Sec. 17, Ch. 335, L. 1974; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1847; Sec. 19-10-303, MCA 1991; redes. 19-19-303 by Code Commissioner, 1993.

19-19-304. Gifts and money to be applied to fund. The following shall be placed in the police retirement fund and transmitted promptly to the board of trustees:

(1) all money withheld from salaries of police officers for the violation of rules of the police department;

(2) all bequests, gifts, or emoluments paid or given on account of any extraordinary service of a member of the police department, except when specifically allowed to be retained by the officer by the mayor, commissioners, and chief of police; and

(3) all money derived from the provisions of this chapter.

History: En. Sec. 10, Ch. 100, L. 1927; amd. Sec. 10, Ch. 120, L. 1929; re-en. Sec. 5108.10, R.C.M. 1935; amd. Sec. 8, Ch. 335, L. 1974; amd. Sec. 37, Ch. 456, L. 1977; R.C.M. 1947, 11-1826; amd. Sec. 22, Ch. 114, L. 1979; Sec. 19-10-304, MCA 1991; redes. 19-19-304 by Code Commissioner, 1993.

19-19-305. Annual state payments to municipality with police department. (1) After the end of each fiscal year, the state auditor shall issue and deliver to the treasurer of each city and town in Montana which has a police department and which is not a participant in the municipal police officers' retirement system his warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to 19-18-512. The payment is statutorily appropriated as provided in 17-7-502.

(2) The payments provided for by 19-19-205 and subsection (1) of this section shall be paid from the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-18-512. Such payments may only be made after deductions have been made from the gross premium tax for cancellations and returned premiums.

(3) Each city or town which has a police retirement fund shall deposit the payment to the credit of its police retirement fund.

(4) Payments provided for in 19-19-205 and subsection (1) of this section are in addition to those provided for in 19-19-301.

History: (1)En. Sec. 1, Ch. 261, L. 1965; amd. Sec. 1, Ch. 229, L. 1975; amd. Sec. 38, Ch. 456, L. 1977; Sec. 11-1834, R.C.M. 1947; (2)En. Sec. 2, Ch. 261, L. 1965; amd. Sec. 2, Ch. 128, L. 1974; amd. Sec. 1, Ch. 230, L. 1975; Sec. 11-1835, R.C.M. 1947; (3), (4)En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; Sec. 11-1836, R.C.M. 1947; R.C.M. 1947, 11-1834, 11-1835, 11-1836(part); amd. Sec. 23, Ch. 114, L. 1979; amd. Sec. 3, Ch. 250, L. 1981; amd. Sec. 23, Ch. 703, L. 1985; Sec. 19-10-305, MCA 1991; redes. 19-19-305 by Code Commissioner, 1993.

Part 4

Eligibility for Retirement Benefits

19-19-401. Eligibility for service retirement. The following persons are eligible for the police retired list of a city and shall retire as provided in this section:

(1) A person who is employed by any city as a police officer on July 1, 1975, is eligible for the police retired list when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

(2) A person who is first employed by a city as a police officer after July 1, 1975, is eligible for the police retired list when he has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(part); amd. Sec. 8, Ch. 86, L. 1985; Sec. 19-10-401, MCA 1991; redes. 19-19-401 by Code Commissioner, 1993.

19-19-402. Eligibility for disability retirement. When a police officer receives injuries or disabilities in the active discharge of his duties as a police officer, which injuries or disabilities are, in the opinion of the board of police commissioners or city council of the city or town, of such character as to impair his ability to discharge his duties as an active police officer, he shall be placed on the retired list of the city or town.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(1)(d); Sec. 19-10-402, MCA 1991; redes. 19-19-402 by Code Commissioner, 1993.

19-19-403. Option of officer to remain on active list. (1) A police officer who is eligible for the retired list under subsection (1) or (2) of 19-19-401 may transfer, as of the time he becomes eligible, to the retired list or may elect to serve an additional 1 to 10 years as an active police officer.

(2) A police officer whose eligibility depends on 19-19-401(2) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday, and he shall be paid the additional 1% for each such year.

History: (1)En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1843, R.C.M. 1947; (2)En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(2), 11-1844(part); amd. Sec. 9, Ch. 86, L. 1985; Sec. 19-10-403, MCA 1991; redes. 19-19-403 by Code Commissioner, 1993.

19-19-404. Reinstatement to retired list. An applicant for reinstatement under the provisions of 7-32-4110 may be reinstated and passed into the retired list of police officers so as to enjoy all the benefits, pensions, and rights which accrue to police officers placed on the retired list in said city or town. The pension benefits to be allowed to such reinstated officer shall be computed upon the basis of his last full year of active service on said police force.

History: En. Sec. 2, Ch. 205, L. 1939; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1809; Sec. 19-10-404, MCA 1991; redes. 19-19-404 by Code Commissioner, 1993.

19-19-405. Credit for military service. A police officer serving in the United States military in time of war or national emergency shall be given credit in his police record for such service in the same manner as though he were on active police duty.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(part); Sec. 19-10-405, MCA 1991; redes. 19-19-405 by Code Commissioner, 1993.

19-19-406. Election to qualify previous military service. (1) A member with 15 years or more of service as a police officer may, at any time prior to his retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit. To qualify this service he must contribute to the account the actuarial cost of granting the service to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of his military service than he has service as a police officer in excess of 15 years. Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more than 25% of the total of all his years of military service, including reserve and active duty time.

History: En. 11-1842.1 by Sec. 1, Ch. 368, L. 1977; R.C.M. 1947, 11-1842.1; amd. Sec. 24, Ch. 114, L. 1979; Sec. 19-10-406, MCA 1991; redes. 19-19-406 by Code Commissioner, 1993.

Part 5

Benefits

19-19-501. Service retirement allowance. When a police officer is transferred from the active list to the retired list of a city, he shall thereafter receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-19-401(1) or (2) and does not elect to serve any additional years as an active police officer shall receive a

sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) A police officer who is eligible after 20 years of service and who elects to serve additional years shall receive the payment provided for in subsection (1) plus an additional 1% of such payment per year of additional service, up to a maximum of 60% of the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

History: En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(part); amd. Sec. 25, Ch. 114, L. 1979; amd. Sec. 10, Ch. 86, L. 1985; Sec. 19-10-501, MCA 1991; redes. 19-19-501 by Code Commissioner, 1993.

19-19-502. Disability retirement allowance. When a police officer is transferred from the active list to the retired list of a city, he shall thereafter receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-19-402 before completing 20 years of service shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) A police officer who is placed on the retired list under 19-19-402 and who, at the time of his injury or disability, was eligible at his option to be placed on the retired list under 19-19-401(1) or (2) but had elected to serve additional years and was then serving such additional years shall be paid for the additional years over his original eligibility at the rate prescribed in 19-19-501(2).

History: En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(part); amd. Sec. 26, Ch. 114, L. 1979; Sec. 19-10-502, MCA 1991; redes. 19-19-502 by Code Commissioner, 1993.

19-19-503. Death benefits. (1) Upon the death of a police officer on the active list or retired list of a city, his surviving spouse, if there is one, shall, as long as such spouse remains the surviving spouse, be paid from the city's police retirement fund a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) If the officer leaves one or more dependent minor children, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent minor children, collectively if there is more than one, shall receive the same monthly payments as a surviving spouse would receive, until they reach the age of 18 years or are married. The payments shall be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one such child, upon each child reaching the age of 18 or marrying, the pro rata payments to that child shall

cease and shall be made to the remaining children, until all the children have either reached the age of 18 or are married.

History: En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(2); amd. Sec. 27, Ch. 114, L. 1979; Sec. 19-10-503, MCA 1991; redes. 19-19-503 by Code Commissioner, 1993.

19-19-504. Protection of benefits from legal process and taxation. (1) The benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-19-505.

(2) The first $3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation.

History: En. 11-1845 by Sec. 15, Ch. 335, L. 1974; amd. Sec. 1, Ch. 214, L. 1977; amd. Sec. 13, Ch. 224, L. 1977; R.C.M. 1947, 11-1845; amd. Sec. 13, Ch. 823, L. 1991; Sec. 19-10-504, MCA 1991; redes. 19-19-504 by Code Commissioner, 1993.

19-19-505. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the department of administration and paid directly by the department to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 11-1845.1 by Sec. 2, Ch. 214, L. 1977; R.C.M. 1947, 11-1845.1; Sec. 19-10-505, MCA 1991; redes. 19-19-505 by Code Commissioner, 1993.

19-19-506. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the salary paid in that fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before April 1 of each year, the board of trustees shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the police retirement fund of the city or town as of the date of the report and were receiving such payments prior to July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the police retirement fund because of the death of a police officer who was receiving such payments prior to July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the police retirement fund and who were receiving such payments prior to July 1, 1975, or in the case of minor children, whose parent, the spouse of a police officer, was receiving such payments prior to July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (4), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from the police retirement fund prior to July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments therefrom, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year.

(3) Each fiscal year immediately after the adoption by a city or town having a police retirement fund of its budget for that fiscal year, each such city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town.

(4) The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance, as provided in 19-19-305(2), to the treasurer of the appropriate city or town at the same time as and in addition to the payment to be made by the state auditor under 19-19-305(1). The payment is statutorily appropriated as provided in 17-7-502.

(5) The treasurer of each city or town receiving funds under subsection (4) shall immediately deposit them to the credit of the city or town's police retirement fund. The board of trustees of the fund shall use the funds to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(6) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively.

History: En. 11-1846.1 by Sec. 2, Ch. 406, L. 1977; R.C.M. 1947, 11-1846.1(part); amd. Sec. 28, Ch. 114, L. 1979; amd. Sec. 24, Ch. 703, L. 1985; Sec. 19-10-506, MCA 1991; redes. 19-19-506 by Code Commissioner, 1993.

CHAPTER 20

TEACHERS' RETIREMENT

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Part 1
General Provisions

19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(3) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions.

(4) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(5) (a) "Average final compensation" means the average of the earned compensation of a member during the 3 consecutive years of full-time service which yield the highest average and on which contributions have been made as required by 19-20-602.

(b) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the amount of each year's earned compensation that may be used in the calculation of average final compensation may not exceed the member's earned compensation from the preceding year by more than 10%, except as provided by rule by the retirement board.

(c) Earned compensation in excess of the amount specified in subsection (5)(b) is considered termination pay as provided in subsection (5)(d).

(d) If the earned compensation includes any termination pay, the member shall select one of the following options:

(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation, if the member has 4 or more years of service with the employer from which the termination pay was received. The amount of compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer must pay contributions on the termination pay according to the rates provided for in 19-20-602(1) and 19-20-605(1).

(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member, and contributions made under 19-20-602 and 19-20-605 must be refunded.

(e) For purposes of this subsection, termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.

(6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(7) "Creditable service" is that service defined by 19-20-401.

(8) "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including amounts paid under a salary reduction agreement, a cafeteria plan, a tax sheltered annuity, a deferred compensation program, and the value of any housing provided by the employer. The employer shall fix the value of any housing provided. The term does not include any other amounts paid in kind or fringe benefits not actually paid to a member. The earned compensation is the full compensation, pay, or salary that would have been paid to a member for full-time service but was not paid to the member because of a reduction in compensation, pay, or salary due to a temporary absence, provided that the retirement system receives the contribution required by 19-20-413. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year, except that any termination pay, as defined in subsection (5)(e), received by the member is limited to the amount actually paid and is not the amount he would have earned had he completed the full year.

(9) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(10) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(11) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(12) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service.

(13) "Pension" means the payments made to a beneficiary for life which are paid out of the pension accumulation fund.

(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(15) "Prior service" means employment of the same nature as service defined in subsection (20) of this section but rendered before September 1, 1937.

(16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 19-20-501(2).

(17) "Retirement allowance" means the annuity plus the pension.

(18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

(19) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(20) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); amd. Sec. 1, Ch. 446, L. 1981; amd. Sec. 1, Ch. 453, L. 1983; amd. Sec. 1, Ch. 224, L. 1985; amd. Sec. 6, Ch. 464, L. 1985; amd. Sec. 2, Ch. 45, L. 1987; amd. Sec. 1, Ch. 56, L. 1989; amd. Sec. 1, Ch. 331, L. 1989; amd. Sec. 2, Ch. 13, L. 1991; Sec. 19-4-101, MCA 1991; redes. 19-20-101 by Code Commissioner, 1993.

19-20-102. Retirement system. The state teachers' retirement system created under the provisions of Chapter 87, Laws of 1937, is hereby recognized as the state teachers' retirement system of the state of Montana, and no provisions of this chapter shall affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment thereto. Such state teachers' retirement system shall be known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have such powers and privileges of a corporation that may be necessary to carry into effect the provisions of this chapter.

History: En. 75-6202 by Sec. 97, Ch. 5, L. 1971; amd. Sec. 22, Ch. 326, L. 1974; R.C.M. 1947, 75-6202; Sec. 19-4-102, MCA 1991; redes. 19-20-102 by Code Commissioner, 1993.

19-20-103. Implied consent of employee. A person who accepts employment for which membership is required is considered to have consented to membership and to the withholding of contributions from his compensation.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part); Sec. 19-4-103, MCA 1991; redes. 19-20-103 by Code Commissioner, 1993.

19-20-104. Guarantee by state. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund, and the maintenance of annuity reserves in the annuity reserve fund, as provided for in this chapter, and the payment of all annuities, pensions, refunds, and other benefits granted under the retirement system are obligations of the state of Montana.

History: En. 75-6216 by Sec. 111, Ch. 5, L. 1971; amd. Sec. 11, Ch. 127, L. 1977; amd. Sec. 9, Ch. 331, L. 1977; R.C.M. 1947, 75-6216; Sec. 19-4-104, MCA 1991; redes. 19-20-104 by Code Commissioner, 1993.

19-20-105. Penalty for fraud. A person who knowingly makes a false statement or who falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the system is guilty of a misdemeanor and is punishable as provided by law.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(1); Sec. 19-4-105, MCA 1991; redes. 19-20-105 by Code Commissioner, 1993.

Part 2

Administration of System

19-20-201. Administration by retirement board. The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and to this end, it is the duty of the retirement board to:

(1) establish rules necessary for the proper administration and operation of the retirement system;

(2) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(3) keep a record of all its proceedings, which must be open to public inspection;

(4) submit a report to the office of budget and program planning as a part of the information required by 17-7-111, detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;

(5) keep in convenient form that data which is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(6) prepare an annual valuation of the assets and liabilities of the retirement system;

(7) prescribe a form for membership application which will provide adequate and necessary information for the proper operation of the retirement system;

(8) annually determine the rate of regular interest as prescribed in 19-20-501;

(9) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(10) perform other duties and functions as are required to properly administer and operate the retirement system.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(1), (5) thru (7), (9), (11), (13), (16) thru (18); amd. Sec. 25, Ch. 112, L. 1991; amd. Sec. 25, Ch. 349, L. 1993; Sec. 19-4-201, MCA 1991; redes. 19-20-201 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 349 at beginning of (4) substituted "submit a report to the office of budget and program planning as a part of the information required by 17-7-111, detailing" for "publish a biennial report by January 1 of each year the legislature meets which reports in detail" and at end, after "system", deleted "and submit the biennial report to the governor and, as provided in 5-11-210, to the legislature"; and made minor changes in style.

19-20-202. Per diem and expenses of board members. The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive $50 per day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at the meetings of such board or in the execution of his duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section shall be paid from the expense fund of the retirement system.

History: En. 75-6204 by Sec. 99, Ch. 5, L. 1971; amd. Sec. 1, Ch. 507, L. 1973; amd. Sec. 51, Ch. 439, L. 1975; R.C.M. 1947, 75-6204; amd. Sec. 3, Ch. 672, L. 1983; Sec. 19-4-202, MCA 1991; redes. 19-20-202 by Code Commissioner, 1993.

19-20-203. Officers and employees of retirement board. It is the duty of the retirement board to:

(1) elect a chairman from its membership;

(2) appoint a secretary who may be one of its members;

(3) employ technical or administrative employees who are necessary for the transaction of the business of the retirement system; and

(4) designate an actuary who meets the qualifications established by the retirement board to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(2) thru (4), (8), (10); amd. Sec. 1, Ch. 24, L. 1987; amd. Sec. 1, Ch. 490, L. 1987; Sec. 19-4-203, MCA 1991; redes. 19-20-203 by Code Commissioner, 1993.

19-20-204. Board's policy governing creditable service. It is the duty of the retirement board to adopt policies for the determination of creditable service in the retirement system implementing the following guidelines:

(1) One year's creditable service shall be awarded for each year of full-time service, outside of vacation periods, but no more than 1 year's creditable service shall be awarded for service during the same school fiscal year.

(2) Not more than 1 month's creditable service shall be awarded for 1 or more continuous months of absence without pay.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(14); Sec. 19-4-204, MCA 1991; redes. 19-20-204 by Code Commissioner, 1993.

19-20-205. Board to determine membership. It is the duty of the retirement board to determine the eligibility of a person to become a member of the retirement system in accordance with the provisions of 19-20-302.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(12); Sec. 19-4-205, MCA 1991; redes. 19-20-205 by Code Commissioner, 1993.

19-20-206. Board to grant benefits. It is the duty of the retirement board to grant retirement, disability, and other benefits under the provisions of this chapter.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(15); Sec. 19-4-206, MCA 1991; redes. 19-20-206 by Code Commissioner, 1993.

19-20-207. Establishment of a tax-deferred annuity program. The retirement board shall establish a tax-deferred annuity program for teachers which shall conform with the provisions of section 403(b) of the Internal Revenue Code. Contributions by members participating in the tax-deferred annuity program shall be maintained in individual accounts established for this purpose.

History: En. 75-6219 by Sec. 7, Ch. 507, L. 1973; R.C.M. 1947, 75-6219; Sec. 19-4-207, MCA 1991; redes. 19-20-207 by Code Commissioner, 1993.

19-20-208. Duties of employer. Each employer shall:

(1) pick up the contribution of each member employed by him at the rate prescribed by 19-20-602 and transmit the contribution each month to the secretary of the retirement board;

(2) pay to the secretary of the retirement board the employer's contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted to the secretary;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform him of his rights and obligations relating to the retirement system;

(5) whenever applicable, inform an employee of his right to elect to participate in the optional retirement program under Title 19, chapter 21;

(6) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system; and

(7) notify the retirement board of the employment of a person eligible for membership and forward his membership application to the board.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part); amd. Sec. 5, Ch. 464, L. 1985; amd. Sec. 11, Ch. 494, L. 1987; Sec. 19-4-208, MCA 1991; redes. 19-20-208 by Code Commissioner, 1993.

Part 3
Membership

19-20-301. Membership application. Whenever a person becomes a member of the retirement system as required by 19-20-302, he shall complete an application form prescribed by the retirement board.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(1); Sec. 19-4-301, MCA 1991; redes. 19-20-301 by Code Commissioner, 1993.

19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of:

(i) a vocational-technical center; or

(ii) a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) any person employed as a speech therapist, school nurse, or school psychologist or in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by (a), (b), (c), or (d) of this subsection (1);

(f) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by (a), (b), (c), or (d) of this subsection (1) since the time of the election, and who may elect to become a member of the retirement system.

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(3) (a) A substitute teacher:

(i) may elect to become an active member of the retirement system on the first day of employment in any fiscal year; or

(ii) shall become an active member of the retirement system on the 31st day of employment in any fiscal year if the substitute teacher has not elected membership under subsection (3)(a)(i).

(b) The employer shall give written notification to a substitute teacher on the first day of employment in any fiscal year of the option to elect membership under subsection (3)(a)(i).

(4) A substitute teacher who did not elect membership under subsection (3)(a)(i) and subsequently becomes a member must be awarded creditable service for substitute teaching service if the substitute teacher contributes:

(a) an amount equal to the combined employee and employer contributions that would have been made if the substitute teacher had elected membership; plus

(b) interest at the rate the contributions would have earned if they had been on deposit with the retirement system.

(5) At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances shall be treated alike.

History: En. 75-6209 by Sec. 104, Ch. 5, L. 1971; amd. Sec. 6, Ch. 127, L. 1977; amd. Sec. 6, Ch. 331, L. 1977; R.C.M. 1947, 75-6209; amd. Sec. 1, Ch. 221, L. 1981; amd. Sec. 1, Ch. 210, L. 1983; amd. Sec. 1, Ch. 22, L. 1987; amd. Sec. 1, Ch. 296, L. 1987; amd. Sec. 12, Ch. 494, L. 1987; amd. Sec. 6, Ch. 658, L. 1987; amd. Sec. 2, Ch. 56, L. 1989; amd. Sec. 1, Ch. 178, L. 1993; Sec. 19-4-302, MCA 1991; redes. 19-20-302 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 178 in (1)(b)(ii), before "to participate", inserted "or is not required"; and made minor changes in style. Amendment effective July 1, 1993.

19-20-303. Inactive membership. Any person's active membership in the retirement system shall terminate, but he shall be an inactive member, when:

(1) he ceases to be employed in a capacity that allows his membership and he has 5 or more years of creditable service in the retirement system;

(2) he ceases to be employed in a capacity that allows his membership and he has less than 5 years of creditable service in the retirement system, but his loss of capacity to be a member was caused by a personal illness determined by the retirement board to be a disability or was caused by service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or by service in the American red cross or merchant marine during time of war; or

(3) he has 5 or more years creditable service and he becomes a member of any other retirement or pension system supported wholly or in part by moneys of another government agency, except the federal social security retirement system, and the membership in the other retirement system would allow credit for the same employment service in two retirement systems. However, no person shall be excluded from active membership solely because he is receiving or is eligible to receive retirement benefits from another retirement system.

History: En. 75-6210 by Sec. 105, Ch. 5, L. 1971; R.C.M. 1947, 75-6210; Sec. 19-4-303, MCA 1991; redes. 19-20-303 by Code Commissioner, 1993.

19-20-304. Membership termination. The active or inactive membership in the retirement system of any person terminates when:

(1) he retires on a retirement allowance of the retirement system;

(2) he dies;

(3) he withdraws his accumulated contributions to the retirement system under the provisions of 19-20-603; or

(4) he ceases to be employed in a capacity that allows his membership, he has less than 5 years of creditable service in the retirement system, and he cannot qualify under the provisions of 19-20-303(2).

History: En. 75-6211 by Sec. 106, Ch. 5, L. 1971; amd. Sec. 7, Ch. 127, L. 1977; R.C.M. 1947, 75-6211; Sec. 19-4-304, MCA 1991; redes. 19-20-304 by Code Commissioner, 1993.

Part 4

Creditable Service

19-20-401. Creditable service. (1) The creditable service of a member begins on the date of his employment in a capacity prescribed for his eligibility in 19-20-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from his compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that no credit may be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-20-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-20-402;

(d) any service awarded for employment while on leave under 19-20-403;

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-20-404;

(f) any employment service awarded by the retirement board under the provisions of 19-20-408;

(g) any service transferred after October 1, 1989, from the public employees' retirement system under 19-20-409;

(h) any service awarded by the retirement board for extension service employment under 19-20-410; and

(i) any service awarded for absence due to employment-related injury under 19-20-411.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

(4) For a member completing only part-time service during the qualifying period, the first full year's teaching salary used to calculate the cost to

purchase creditable service is the salary that he would have earned if his first year part-time salary had been full-time.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(2) thru (4); amd. Sec. 2, Ch. 551, L. 1981; amd. Sec. 2, Ch. 38, L. 1987; amd. Sec. 2, Ch. 79, L. 1987; amd. Sec. 3, Ch. 56, L. 1989; amd. Sec. 2, Ch. 690, L. 1989; Sec. 19-4-401, MCA 1991; redes. 19-20-401 by Code Commissioner, 1993.

19-20-402. Creditable service for out-of-state employment. (1) (a) A member who became a member before July 1, 1989, may apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana. If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, he must receive a refund of his contributions for the out-of-state service before qualifying service under this section. The member must be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system as provided in subsection (2).

(b) For the purpose of this section, out-of-state employment includes service performed outside the United States in a federal or other public or private school or institution if the service would have been acceptable under this chapter if performed in the state of Montana.

(2) (a) Except as provided in subsection (2)(b), to qualify service under this section, the member must contribute an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate must be the rate in effect at the time he is eligible for the service.

(b) To qualify service performed outside the United States in a federal or other public or private school or institution, the member must contribute for each year of service to be qualified an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned in Montana after his out-of-state service or after July 1, 1989, whichever date is later, plus interest at the rate the contribution would have earned had the contribution been in his account from the date he was eligible to qualify the service. The contribution rate must be the rate in effect at the time he is eligible to qualify the service or the rate in effect on July 1, 1989, whichever date is later.

(3) The contributions required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(1); amd. Sec. 1, Ch. 295, L. 1979; amd. Sec. 2, Ch. 113, L. 1989; amd. Secs. 1, 5, Ch. 357, L. 1989; Sec. 19-4-402, MCA 1991; redes. 19-20-402 by Code Commissioner, 1993.

19-20-403. Creditable service for employment while on leave. (1) A member with 5 years or more of creditable service in the retirement system who became a member before July 1, 1989, may apply for creditable service for employment while on leave. If he contributes to the retirement system as provided in subsection (2), the member must be awarded creditable service in an amount not exceeding 2 years as determined by the board, conditional upon his having been a member prior to his leave and upon his completing 1 year of active membership in Montana subsequent to his return.

(2) To qualify service under this section, the member must contribute an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account. The contribution rate must be the rate in effect at the time he is eligible for the service. The contribution may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(2); amd. Sec. 3, Ch. 113, L. 1989; amd. Secs. 2, 5, Ch. 357, L. 1989; Sec. 19-4-403, MCA 1991; redes. 19-20-403 by Code Commissioner, 1993.

19-20-404. Creditable service for active service in military, red cross, or merchant marine. (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean conflict between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has 5 years or more of creditable service in the retirement system. To qualify this service, a member shall submit to the board a completed application form and proper certification of the member's military service.

(2) (a) If a member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection (a) for creditable service in the retirement system, except as provided in subsection (2)(b), for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person must be awarded creditable service, conditional upon the person's completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if the person contributes to the retirement system an amount equal to the combined employer and employee contributions for the person's first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in the person's account upon completion of 5 years of membership service in Montana. The contribution rate is that rate in effect at the time the person is eligible for the service.

(b) If a member elects to purchase additional service under 19-20-412, service purchased under this subsection (2) may be used only for the purpose of calculating the member's retirement allowance and may not be considered creditable service for the purpose of determining eligibility under 19-20-801 or 19-20-802.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

History: **En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(3); amd. Sec. 1, Ch. 193, L. 1981; amd. Sec. 4, Ch. 113, L. 1989; amd. Sec. 1, Ch. 204, L. 1989; amd. Sec. 1, Ch. 185, L. 1993; Sec. 19-4-404, MCA 1991; redes. 19-20-404 by Code Commissioner, 1993.**

Compiler's Comments

1993 Amendment: Chapter 185 in (1), before "Vietnam conflict", inserted provision concerning the Korean conflict; and made minor changes in style. Amendment effective March 25, 1993.

19-20-405. Limit on creditable service which can be awarded. The total creditable service for out-of-state teaching, employment while on leave, employment with the Montana cooperative extension service, and active service in the armed forces of the United States or the American red cross or merchant marine may not exceed 5 years.

History: **En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(4); amd. Sec. 3, Ch. 79, L. 1987; Sec. 19-4-405, MCA 1991; redes. 19-20-405 by Code Commissioner, 1993.**

19-20-406. Creditable service for prior service. A member who is retiring with at least 5 years of creditable service and who has been an active member for at least 5 consecutive school fiscal years may request creditable service for any employment service he rendered prior to September 1, 1937, for which he has not received a prior service certificate. In order to receive the creditable service, he must apply for it and provide certification of the prior service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate.

History: **En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(5); Sec. 19-4-406, MCA 1991; redes. 19-20-406 by Code Commissioner, 1993.**

19-20-407. No duplication of benefits when there is more than one period of service. There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: **En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(9); Sec. 19-4-407, MCA 1991; redes. 19-20-407 by Code Commissioner, 1993.**

19-20-408. Creditable service for employment in private schools. A person applying for membership before July 1, 1989, may also apply for creditable service in the retirement system for employment service in a private elementary, secondary, or postsecondary educational institution. Employment service must be of an instructional nature or be employment as an administrative officer or a member of the scientific staff. Employment service does not include students employed by a private elementary, secondary, or postsecondary educational institution. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in the retirement system, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned after becoming a member of the retirement system or returning to the retirement system, whichever is later, for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contributions may be made in lump-sum payment or in installments as agreed between the person and the retirement board. The provisions of 19-20-405 apply to creditable service purchased under this section.

History: En. Sec. 1, Ch. 551, L. 1981; amd. Sec. 5, Ch. 113, L. 1989; Sec. 19-4-408, MCA 1991; redes. 19-20-408 by Code Commissioner, 1993.

19-20-409. Transfer of service credits from public employees' retirement system. (1) A member may at any time before his retirement make a written election with the retirement board to qualify in the teachers' retirement system all of his creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to qualify this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount determined in accordance with subsection (3).

(3) The employee shall pay an amount equal to his accumulated contributions at the time he terminated active membership under 19-2-601 plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

(4) A member who qualifies service from the public employees' retirement system in the teachers' retirement system must complete 5 years of membership service in the teachers' retirement system to qualify or purchase military service, out-of-state teaching service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If a member who has creditable service in the public employees' retirement system dies before he qualifies this service in the teachers' retirement system and if his service credits from both systems, when combined, entitle his beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to qualify this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) If the retirement board determines that an individual's membership was erroneously classified, the member's accumulated contributions and service must be transferred to the teachers' retirement system and any employee and employer contributions due as calculated in 19-20-602 and

19-20-605 are the liability of the employee and the employing entity where the error occurred, respectively.

History: En. Sec. 2, Ch. 290, L. 1983; amd. Sec. 3, Ch. 690, L. 1989; amd. Sec. 2, Ch. 64, L. 1991; Sec. 19-4-409, MCA 1991; redes. 19-20-409 by Code Commissioner, 1993.

19-20-410. Creditable service for extension service employment. (1) At any time before retirement, a member with 5 years or more of creditable service in the retirement system may make a written election with the retirement board to qualify up to 5 years of his employment service with the Montana cooperative extension service, subject to the limitation contained in 19-20-405, if:

(a) the member became a member of the retirement system before July 1, 1989;

(b) the service involved instructional service at a unit of the Montana university system; and

(c) the member received a refund of his membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be qualified.

(2) To qualify service under this section, the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned after becoming a member of the retirement system for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service. The contribution rate must be that rate in effect at the time he is eligible for the service.

(3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board.

History: En. Sec. 1, Ch. 79, L. 1987; amd. Sec. 6, Ch. 113, L. 1989; Sec. 19-4-410, MCA 1991; redes. 19-20-410 by Code Commissioner, 1993.

19-20-411. Absence due to employment-related injury. (1) (a) Subject to the limitation in subsection (5), time during which a member is absent because of an injury related to employment covered by the retirement system that entitles him to workers' compensation payments may be qualified under the retirement system if the member was a member of the retirement system before July 1, 1989. To qualify this service, a member shall contribute to the retirement system, upon his return to contributing membership service, an amount equal to:

(i) the contributions which would have been made by him had he not been absent, based on his compensation at the commencement of his absence;

(ii) interest, which begins to accrue 1 year from the date he returns to covered employment; and

(iii) interest not paid by the employer under subsection (1)(b).

(b) Whenever a member elects to contribute under subsection (1)(a), the employer shall contribute an amount equal to the contributions which would have been made by the employer had the member not been absent, based on the member's compensation at the commencement of his absence. The employer may contribute an amount equal to the interest accruing on the employer's contributions calculated in the same manner as interest on the employee's contributions under subsection (1)(a). If the employer elects not to pay the interest, this amount must be paid by the employee.

(2) A member shall file with the retirement board a written notice of his intent to pay the contributions under subsection (1)(a).

(3) Payment of the employee's contributions due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered employment.

(4) A member absent as provided in subsection (1)(a) loses his right to contribute under this section if all of his accumulated normal contributions are refunded under 19-20-603.

(5) The maximum amount of membership service allowable under this section is 2 years.

History: En. Sec. 1, Ch. 38, L. 1987; amd. Sec. 7, Ch. 113, L. 1989; Sec. 19-4-411, MCA 1991; redes. 19-20-411 by Code Commissioner, 1993.

19-20-412. Election to purchase additional service. (1) (a) Except as provided in subsection (3), a member with 5 years or more of creditable service may make a written election with the retirement board to purchase, for the purpose of calculating his retirement allowance, 1 year of additional service for:

(i) each 5 years of service on which contributions have been made as required under the provisions of 19-20-602; and

(ii) each 5 years of membership service as defined in Title 19, chapter 3, for which contributions have been made as required under the provisions of 19-20-409.

(b) A maximum of 5 years of additional service may be purchased under this section. A part-time member may purchase additional service on a prorated basis.

(2) (a) To purchase additional service under this section, a member shall contribute, in a lump-sum payment or in installments as agreed upon by the member and the retirement board, an amount equal to:

(i) the combined employer and employee rate on July 1, 1989, or the combined rate in effect at the time he is eligible to purchase the service, whichever date is later, multiplied by his earned compensation as provided in subsection (2)(b); and

(ii) interest at a rate of 8% compounded annually from July 1, 1989, or from the date at which he is eligible to purchase the service, whichever date is later.

(b) The earned compensation used in calculating the cost of purchasing additional service under this section is:

(i) for the first year of service purchased, the member's earned compensation for the 1988-89 school year or for his fifth year of service, whichever year is later;

(ii) for the second year of service purchased, the member's earned compensation for the 1988-89 school year or for his 10th year of service, whichever year is later;

(iii) for the third year of service purchased, the member's earned compensation for the 1988-89 school year or for his 15th year of service, whichever year is later;

(iv) for the fourth year of service purchased, the member's earned compensation for the 1988-89 school year or for his 20th year of service, whichever year is later; and

(v) for the fifth year of service purchased, the member's earned compensation for the 1988-89 school year or for his 25th year of service, whichever year is later.

(3) On or after July 1, 1989, a member eligible to purchase creditable service under 19-3-504, 19-3-510, 19-3-512, 19-3-513, 19-20-402, 19-20-403, 19-20-408, 19-20-410, or 19-20-411 may not purchase additional service under this section unless he elects in writing to:

(a) waive his eligibility to purchase creditable service under sections referred to in subsection (3); and

(b) apply the accumulated contributions made under sections referred to in subsection (3) to the cost of additional service purchased under this section.

(4) Additional service purchased under this section may not be used to qualify a member for service retirement.

History: En. Sec. 1, Ch. 113, L. 1989; amd. Sec. 1, Ch. 8, L. 1991; Sec. 19-4-412, MCA 1991; redes. 19-20-412 by Code Commissioner, 1993.

19-20-413. Purchase of salary credit. (1) A member may apply for credit for earned compensation that was not paid to the member and not reported to the system because of a temporary absence of the member.

(2) To qualify salary under this section, a contribution must be paid in an amount equal to 5.7% of the salary not reported to the system multiplied by the total years of creditable service.

History: En. Sec. 1, Ch. 13, L. 1991; Sec. 19-4-413, MCA 1991; redes. 19-20-413 by Code Commissioner, 1993.

Part 5

Management of Funds

19-20-501. Financial administration of money. The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board annually shall establish the rate of regular interest.

(3) The retirement board annually shall divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 19-20-605(5), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to the expense fund under the provisions of 19-20-606.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) All the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(1) thru (4), (7); amd. Sec. 3, Ch. 282, L. 1983; amd. Sec. 2, Ch. 8, L. 1991; Sec. 19-4-501, MCA 1991; redes. 19-20-501 by Code Commissioner, 1993.

19-20-502. Restrictions on use of moneys. (1) No member of the retirement board or any of its employees may:

(a) have an interest, direct or indirect, in the gains or profits of any investment of moneys of the retirement system, except as herein provided;

(b) directly or indirectly, for himself or as an agent, in any manner use the moneys or deposits of the retirement system except to make such current and necessary expenditures as are authorized by the retirement board;

(c) become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(5), (8); Sec. 19-4-502, MCA 1991; redes. 19-20-502 by Code Commissioner, 1993.

19-20-503. Transfer of dormant savings account. The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation fund if the account has been dormant for a period of 7 years. No right of the member may be jeopardized by such transfer, and the amount shall be transferred back to the member's annuity savings account upon his request.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(6); Sec. 19-4-503, MCA 1991; redes. 19-20-503 by Code Commissioner, 1993.

19-20-504. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(9); Sec. 19-4-504, MCA 1991; redes. 19-20-504 by Code Commissioner, 1993.

Part 6

Funds — Contributions

19-20-601. Method of financing. The retirement board shall establish and maintain the funds described in this part, in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(1); Sec. 19-4-601, MCA 1991; redes. 19-20-601 by Code Commissioner, 1993.

19-20-602. Annuity savings fund — member's contribution. The annuity savings fund is a fund in which the contributions for the members to provide for their annuities shall be accumulated in individual accounts for each member. The normal contribution of each member is 7.044% of his earned compensation. Contributions to and payments from the annuity savings fund shall be made in the following manner:

(1) (a) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions which would be payable by the member under this section for service rendered after June 30, 1985.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and his earned compensation as used to define his average final compensation in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims whatsoever for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(2) In addition to the normal contributions and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to any accumulated contributions which he has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

(3) The accumulated contributions of a member withdrawn by him or paid to his estate or to his designated beneficiary in event of his death shall be paid from the annuity savings fund. Upon the retirement of a member, his accumulated contributions shall be transferred from the annuity savings fund to the pension accumulation fund.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd.

Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(2); amd. Sec. 1, Ch. 198, L. 1983; amd. Sec. 1, Ch. 527, L. 1983; amd. Sec. 7, Ch. 464, L. 1985; Sec. 19-4-602, MCA 1991; redes. 19-20-602 by Code Commissioner, 1993.

19-20-603. Withdrawal of accumulated contributions — options. Any inactive member electing to do so or any person whose membership terminates may withdraw the member's or person's accumulated contributions from the annuity account in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of subsection (1) or (3) of 19-20-303 may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

(3) Any person whose membership terminates under the provisions of 19-20-304(4) may withdraw the person's accumulated contributions.

(4) Upon written request, a terminating member may have the payment of the accumulated contributions split. The tax-deferred portion of the contributions may be paid directly to an individual retirement account or other qualified plan designated by the member, and the other portion must be paid directly to the terminating member. The board shall provide forms for making the written request. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the status of the amount.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(6); amd. Sec. 1, Ch. 226, L. 1993; Sec. 19-4-603, MCA 1991; redes. 19-20-603 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 226 inserted (4) relating to a terminated member's request for the splitting of paid accumulated contributions; and made minor changes in style. Amendment effective March 30, 1993.

19-20-604 reserved.

19-20-605. Pension accumulation fund — employer's contribution. The pension accumulation fund is the fund in which the reserves for payment of pensions and annuities must be accumulated and from which pensions, annuities, and benefits must be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund must be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to 7.47% of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the money of the retirement system shall be credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity savings fund shall be transferred to that fund from the pension accumulation fund.

(6) All pensions, annuities, and benefits must be paid from the pension accumulation fund.

(7) The retirement board may, in its discretion, transfer from the pension accumulation fund an amount necessary to cover expenses of administration.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(4); amd. Sec. 2, Ch. 193, L. 1981; amd. Sec. 1, Ch. 251, L. 1981; amd. Sec. 9, Ch. 549, L. 1981; amd. Sec. 2, Ch. 527, L. 1983; amd. Sec. 3, Ch. 658, L. 1985; amd. Sec. 2, Ch. 204, L. 1989; amd. Sec. 2, Ch. 530, L. 1993; Sec. 19-4-605, MCA 1991; redes. 19-20-605 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 530 in (1) increased the employer's contribution from 7.459% to 7.47%; and made minor changes in style. Amendment effective January 1, 1994.

19-20-606. Expense fund. The expense fund is the fund to which all moneys appropriated for the administrative expenses of the retirement system shall be credited and from which the expenses of administration of the retirement system shall be paid, exclusive of amounts payable as retirement allowances or other benefits. Any request for an increase of spending authority for administrative expenses requires a budget amendment and is subject to Title 17, chapter 7, part 4.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(5); amd. Sec. 2, Ch. 328, L. 1985; Sec. 19-4-606, MCA 1991; redes. 19-20-606 by Code Commissioner, 1993.

Part 7

Benefits in General

19-20-701. Benefits. The retirement, disability, and other benefits of the retirement system shall be granted on the basis of the provisions of this chapter.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(1); Sec. 19-4-701, MCA 1991; redes. 19-20-701 by Code Commissioner, 1993.

19-20-702. Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (2) in lieu of the normal form of retirement allowance, which is provided for in part 8 of this chapter and 19-20-902. If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's retirement or disability allowance at the time of the member's retirement and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the person that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

(b) Option B—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(c) Option C—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(d) Option D—some other benefit will be paid either to the member or the member's surviving designated beneficiary in accordance with provisions approved by the retirement board.

(3) (a) Upon written request to the retirement board, a retired member who is receiving an optional retirement allowance may designate a different beneficiary, select a different option, or convert the member's optional retirement allowance to a regular retirement or disability allowance if:

(i) the original beneficiary has died; or

(ii) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(4) Effective on the first of the month following receipt of notification of the death of a person nominated as the designated beneficiary under subsection (2), any optional retirement allowance that is effective after October 1, 1993, will revert to the full normal form of retirement allowance available at the time of retirement. The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(8); amd. Sec. 1, Ch. 493, L. 1985; amd. Sec. 1, Ch. 9, L. 1993; Sec. 19-4-702, MCA 1991; redes. 19-20-702 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 9 in (1), near beginning of second sentence, substituted "member" for "beneficiary"; deleted former (2)(d) and (2)(e) that read: "(d) Option D—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, one-half of the optional allowance will be continued throughout the lifetime of the survivor.

(e) Option E—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, two-thirds of the optional allowance will be continued throughout the lifetime of the survivor"; inserted (4) regarding reversion of full normal form of retirement allowance upon death of designated beneficiary; and made minor changes in style.

19-20-703. Payments to be monthly. All pensions and annuities shall be paid in equal monthly installments.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); Sec. 19-4-703, MCA 1991; redes. 19-20-703 by Code Commissioner, 1993.

19-20-704. Annual payment from extra income. The retirement board may make an annual payment to the beneficiaries of the difference between the rate of interest used in calculating the benefit from the annuity reserve fund and the interest earned on investments.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); Sec. 19-4-704, MCA 1991; redes. 19-20-704 by Code Commissioner, 1993.

19-20-705. Correction of erroneous payments. If a change or error in the records results in a member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled will be paid.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(2); Sec. 19-4-705, MCA 1991; redes. 19-20-705 by Code Commissioner, 1993.

19-20-706. Exemption from taxation and legal process. Except as provided in 19-2-907, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for:

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter.

History: En. 75-6215 by Sec. 110, Ch. 5, L. 1971; R.C.M. 1947, 75-6215; amd. Sec. 8, Ch. 464, L. 1985; amd. Sec. 25, Ch. 83, L. 1989; amd. Sec. 7, Ch. 823, L. 1991; amd. Sec. 3, Ch. 259, L. 1993; Sec. 19-4-706, MCA 1991; redes. 19-20-706 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 259 at beginning inserted exception clause.

19-20-707. Increase in allowances of certain retirees. (1) On July 1, 1977, every beneficiary receiving a retirement allowance who was receiving such allowance prior to July 1, 1971, will be entitled to an increase in his monthly retirement allowance of $1 per month for each year of creditable service plus $2 per month for each year he was retired prior to July 1, 1971. In the case of beneficiaries who are receiving an early retirement allowance, the latter figure of $2 per month shall be multiplied by a fraction, the numerator of which is the number of years of his creditable service and the denominator of which is 30.

(2) The funds to pay for the increases in retirement allowances prescribed in subsection (1) shall be provided as follows:

(a) one-half from an increase, sufficient for the purpose, in the payroll deduction provided for in 19-20-602; and

(b) one-half from an increase, sufficient for the purpose, in the employer's contribution provided for in 19-20-605(1).

History: (1)En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; Sec. 75-6208, R.C.M. 1947; (2)En. 75-6207.1 by Sec. 2, Ch. 443, L. 1977; Sec. 75-6207.1, R.C.M. 1947; R.C.M. 1947, 75-6207.1, 75-6208(3)(c); amd. Sec. 9, Ch. 464, L. 1985; Sec. 19-4-707, MCA 1991; redes. 19-20-707 by Code Commissioner, 1993.

19-20-708. Cost-of-living increase. Effective July 1, 1985, each monthly service or disability retirement allowance or survivorship allowance payable to a member of the teachers' retirement system retired before July 1, 1983, or his beneficiary must be increased as follows:

(1) 50 cents for each year of creditable service for a member or beneficiary receiving a monthly allowance of more than $500 but less than $1,000, exclusive of the increase provided in this subsection; and

(2) $1 for each year of creditable service for a member or beneficiary receiving a monthly allowance of $500 or less, exclusive of the increase provided in this subsection.

History: En. Sec. 1, Ch. 658, L. 1985; Sec. 19-4-708, MCA 1991; redes. 19-20-708 by Code Commissioner, 1993.

19-20-709. Minimum monthly benefit allowance. (1) A member of the teachers' retirement system retired before July 1, 1971, who is receiving a service or disability retirement allowance, or his beneficiary who is receiving a service, disability, or survivorship allowance, is eligible to receive a minimum monthly benefit allowance of $400 if at the time of retirement the member:

(a) was 60 years of age or older; and

(b) had completed 30 years or more of service.

(2) A member or beneficiary who is eligible for a minimum monthly benefit allowance under subsection (1) is entitled to receive this benefit increase before his allowance is adjusted under 19-20-708.

History: En. Sec. 2, Ch. 658, L. 1985; Sec. 19-4-709, MCA 1991; redes. 19-20-709 by Code Commissioner, 1993.

19-20-710. Maximum benefit limitation. No monthly benefit paid under the retirement system provided for in this chapter may exceed the annual limits on benefits as specified in section 415 of the Internal Revenue Code of 1986 and adjusted annually by the commissioner of internal revenue for calendar years 1988 and thereafter.

History: En. Sec. 1, Ch. 14, L. 1987; Sec. 19-4-710, MCA 1991; redes. 19-20-710 by Code Commissioner, 1993.

19-20-711. Eligibility for postretirement adjustment. (1) Except as provided in subsection (2), a member or beneficiary is eligible to receive a postretirement adjustment as provided in 19-20-713 if he is receiving a:

(a) service retirement allowance and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or

(b) disability or survivorship allowance.

(2) A member or beneficiary is ineligible to receive a postretirement adjustment under subsection (1) unless he has been receiving a monthly service, disability, or survivorship allowance for at least 24 consecutive months on or before June 30 in the year the adjustment is made.

History: En. Sec. 1, Ch. 115, L. 1989; Sec. 19-4-711, MCA 1991; redes. 19-20-711 by Code Commissioner, 1993.

19-20-712. Funding for postretirement adjustment — reserve fund. (1) At the end of each fiscal year, the board shall determine the total investment income earned on the retirement fund for that fiscal year. From this amount, the board shall subtract the:

(a) actuarial amount required to fund the retirement system for the fiscal year; and

(b) retirement system's administrative and investment expenses for the fiscal year.

(2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of investment income earned on that portion of the retirement fund balance representing retired members.

(b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

(3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment to eligible members or beneficiaries under 19-20-713.

(4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement adjustment of at least $1 under 19-20-713, an adjustment may not be made in that calendar year.

(5) The amount available for payment of the postretirement allowance is limited to an amount that would provide a percentage increase in the average service, disability, or survivorship allowance of all eligible members, when combined with the postretirement adjustment, that is equal to or less than the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers compiled by the bureau of labor statistics, United States department of labor, or its successor agency.

History: En. Sec. 2, Ch. 115, L. 1989; Sec. 19-4-712, MCA 1991; redes. 19-20-712 by Code Commissioner, 1993.

19-20-713. Payment and amount of postretirement adjustment. (1) Effective January 1 of each year that funds are available under 19-20-712, a member or beneficiary eligible under 19-20-711 shall receive a postretirement adjustment in the form of a monthly benefit payable for life.

(2) The board shall calculate the amount of the postretirement allowance payable to an eligible member or beneficiary by:

(a) dividing the amount available under 19-20-712(3) for payment of the postretirement allowance by the total accumulated years of service for all eligible members and beneficiaries;

(b) multiplying the quotient obtained in subsection (2)(a) by the member's total years of service;

(c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly annuity from actuarial tables adopted by the board; and

(d) applying the provisions contained in subsections (3) and (4).

(3) If a member had elected to receive an optional retirement allowance, the amount of his postretirement allowance must be adjusted by the appropriate optional factor.

(4) If more than one beneficiary is receiving a member's retirement allowance, the postretirement adjustment must be divided in the same manner as the member's retirement allowance.

History: En. Sec. 3, Ch. 115, L. 1989; Sec. 19-4-713, MCA 1991; redes. 19-20-713 by Code Commissioner, 1993.

19-20-714. *(Effective January 1, 1994)* **Benefit adjustment for pre-July 1977 retirees.** Effective January 1, 1994, a person who retired prior to July 1, 1977, and who is receiving a monthly retirement benefit must receive a one-time benefit increase of 0.5% for each year of service on record with the teachers' retirement system for which the person did not receive retirement service credit because of now-repealed provisions that limited service credit to years on which contributions were made prior to age 60 or to 35 years of service, whichever was greater.

History: En. Sec. 1, Ch. 530, L. 1993.

Compiler's Comments

Effective Date: Section 4, Ch. 530, L. 1994, provided that this section is effective January 1, 1994.

Part 8

Superannuation Retirement

19-20-801. Eligibility for superannuation retirement. A member who has at least 5 full years of creditable service, whose last 5 years of creditable service were in this state, and who has attained the age of 60 or has been credited with full-time or part-time service in 25 or more years may retire from service if he files with the retirement board his written application setting forth the fact of his retirement.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(a); amd. Sec. 3, Ch. 527, L. 1983; Sec. 19-4-801, MCA 1991; redes. 19-20-801 by Code Commissioner, 1993.

19-20-802. Early retirement. (1) A member who has at least 5 years of creditable service, whose last 5 years of creditable service were in this state, and who has attained the age of 50 may retire from service and be eligible for an early retirement allowance if he files with the retirement board his written application setting forth the fact of his retirement.

(2) The early retirement allowance shall be determined as prescribed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, with the exception that the allowance will be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 25 years of creditable service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 25 years of creditable service.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(3)(d); amd. Sec. 1, Ch. 396, L. 1981; amd. Sec. 7, Ch. 549, L. 1981; amd. Sec. 4, Ch. 527, L. 1983; Sec. 19-4-802, MCA 1991; redes. 19-20-802 by Code Commissioner, 1993.

19-20-803 reserved.

19-20-804. Allowance for superannuation retirement. (1) Upon superannuation retirement, a member shall receive a retirement allowance consisting of a pension which, together with an annuity, provides a retirement allowance equal to one-sixtieth of his average final compensation multiplied by the sum of the number of years of creditable service, service transferred under 19-20-409, and additional service purchased under 19-20-412.

(2) Any retired member may be employed as a part-time or substitute teacher in Montana and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of his average final compensation plus normal annual salary increases for teaching personnel employed by the school district, state agency, political subdivision, or university unit that employed the member at the time of retirement; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(d), (3)(a), (3)(b); amd. Sec. 6, Ch. 549, L. 1981; amd. Sec. 1, Ch. 443, L. 1983; amd. Sec. 8, Ch. 113, L. 1989; Sec. 19-4-804, MCA 1991; redes. 19-20-804 by Code Commissioner, 1993.

Part 9
Disability Retirement

19-20-901. Eligibility for disability retirement — determination by board. (1) Upon the application of a member or of the member's employer for a disability retirement allowance, any member who has 5 or more years of creditable service and who has become disabled while being an active member may be retired by the retirement board the month immediately following the month in which employment is terminated. In order for a member to be eligible for disability retirement, the retirement board shall certify that the member is mentally or physically incapacitated for the further performance of the member's duties, that the incapacity is likely to be permanent, and that the member should be retired.

(2) In making a determination under subsection (1), the retirement board or its representative may:

(a) order examinations by a physician, psychologist, or vocational rehabilitation counselor;

(b) conduct hearings, administer oaths and affirmations, take depositions, and certify to official acts; and

(c) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memorandums, and other records considered necessary as evidence in connection with a claim for disability retirement. The subpoenas issued under this subsection (c) are enforceable as provided in 2-4-104.

(3) The retirement board may secure and pay reasonable compensation for professional services and advice the board determines necessary to carry out the purposes of this part.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(a); amd. Sec. 3, Ch. 8, L. 1991; amd. Sec. 2, Ch. 226, L. 1993; Sec. 19-4-901, MCA 1991; redes. 19-20-901 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 226 inserted (2) relating to exams ordered, hearings conducted, and subpoenas issued by the Board or its representative in making a determination; inserted (3) allowing the Board to secure and pay for professional services to carry out this part; and made minor changes in style. Amendment effective March 30, 1993.

19-20-902. Allowance for disability retirement. Upon retirement for disability, a member must receive a disability retirement allowance equal to:

(1) one-sixtieth of the member's average final compensation multiplied by the sum of the number of years of creditable service, service transferred under 19-20-409, and additional service purchased under 19-20-412, if the retirement allowance exceeds one-fourth of the member's average final compensation; or

(2) a pension that, together with the member's annuity, provides a total retirement allowance equal to one-fourth of the member's average final compensation.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(5)(a) thru (5)(c); amd. Sec. 61, Ch. 370, L. 1987; amd. Sec. 9, Ch. 113, L. 1989;

amd. Sec. 3, Ch. 226, L. 1993; Sec. 19-4-902, MCA 1991; redes. 19-20-902 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 226 deleted part of former (1) that provided that if eligible, a member must receive the superannuation allowance provided for under part 8 of this chapter; deleted (2)(a) that provided that a member not eligible for a superannuation allowance must receive an annuity that would be the actuarial equivalent of accumulated contributions at the time of retirement; deleted introductory provision of (2)(b) that provided that a member receive a pension, together with the annuity; deleted (3) that provided that the retirement allowance could not exceed one-sixtieth of the average final compensation multiplied by the number of years that would be creditable to the member if employment would have continued until the attainment of the minimum age for superannuation retirement; and made minor changes in style. Amendment effective March 30, 1993.

19-20-903. Medical examination of disability retiree. (1) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance and once in every 3-year period thereafter, the retirement board may require and, upon the beneficiary's application, shall permit a disability beneficiary who has not yet attained the age of 60 to undergo a medical examination by a physician or physicians designated by the retirement board. The examination shall be made at the place of residence of the beneficiary or other place mutually agreed upon.

(2) Should a disability beneficiary who has not yet attained the age of 60 refuse to submit to a medical examination as required in subsection (1), his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for 1 year, all his rights in and to his disability pension may be revoked by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(b); amd. Sec. 2, Ch. 24, L. 1987; Sec. 19-4-903, MCA 1991; redes. 19-20-903 by Code Commissioner, 1993.

19-20-904. Adjustment of allowance. (1) If any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation or the difference between the median salary of those members retired during the preceding fiscal year and his retirement allowance, whichever is greater, his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, is equal to his average final compensation or the median salary of those members retired during the preceding fiscal year, whichever is greater.

(2) If his earning capacity is changed later, his pension may be further modified, but the new pension may not exceed the pension originally granted or an amount which, when added to the amount earnable by the beneficiary, together with his annuity equals his average final compensation.

(3) A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired may not become a member of the retirement system while receiving a reduced benefit.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(c); amd. Sec. 1, Ch. 197, L. 1983; amd. Sec. 3, Ch. 24, L. 1987; Sec. 19-4-904, MCA 1991; redes. 19-20-904 by Code Commissioner, 1993.

19-20-905. Cancellation of allowance and restoration of membership. (1) If a disability beneficiary under age 60 is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease and he shall again become an active member of the retirement system. Any prior service certificate on the basis of which his service was computed at the time of his disability retirement shall be restored to full force, and upon his subsequent retirement, he shall be credited with such prior service and all his subsequent service as a member.

(2) If he is restored to active service on or after the attainment of the age of 55 years, his pension upon subsequent retirement may not exceed the pension that he would have received had he remained in service during the period of his previous retirement or the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new member.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(d); Sec. 19-4-905, MCA 1991; redes. 19-20-905 by Code Commissioner, 1993.

Part 10
Death Benefits

19-20-1001. Allowances for death of member. (1) If a member dies before retirement, his accumulated contributions shall be paid to his estate or such person as he may have nominated by a written designation filed with the retirement board prior to his death in the manner prescribed by the board.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total annuity payments made and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, a lump-sum death benefit of $500 is payable to his designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, the sum of $200 per month shall be paid to each minor child of the deceased member until such child reaches his 18th birthday.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part); amd. Sec. 8, Ch. 549, L. 1981; amd. Sec. 4, Ch. 56, L. 1989; Sec. 19-4-1001, MCA 1991; redes. 19-20-1001 by Code Commissioner, 1993.

19-20-1002. Payments upon death of retiree. (1) In the event of the death of a member after retirement, a death benefit of $500 is payable to his designated beneficiary.

(2) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of his death, the sum of $200 per month shall be paid to each minor child of the deceased member until such child reaches his 18th birthday.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part); amd. Sec. 5, Ch. 56, L. 1989; Sec. 19-4-1002, MCA 1991; redes. 19-20-1002 by Code Commissioner, 1993.

Part 11

Group Insurance

19-20-1101. Withholding of group insurance premium from retirement allowance. A retired member who is a participant in an employer-sponsored group insurance plan may elect to have the monthly premium for such group insurance withheld from his retirement allowance by the retirement system and paid directly to the insurance carrier or employer of record at the time of retirement.

History: En. Sec. 1, Ch. 20, L. 1987; Sec. 19-4-1101, MCA 1991; redes. 19-20-1101 by Code Commissioner, 1993.

CHAPTER 21

UNIVERSITY SYSTEM

OPTIONAL RETIREMENT PROGRAM

Part 1 — General Provisions

19-21-101. Authority to establish optional retirement program.
19-21-102. Definition of teachers' retirement system.
19-21-103. Duties of board of regents.
19-21-104 through 19-21-110 reserved.
19-21-111. Actuarial investigation to determine past service liability compared to contributions required.

Part 2 — Participation—Benefits

19-21-201. Participation in program.
19-21-202. Effect on rights under teachers' retirement system.
19-21-203. Contributions.
19-21-204 through 19-21-210 reserved.
19-21-211. Payment of benefits.
19-21-212. Exemption from taxation, legal process, and assessments.

Part 1
General Provisions

19-21-101. Authority to establish optional retirement program. The board of regents may establish an optional retirement program, as provided in this chapter, for the administrative officers and members of the instructional and scientific staff of the Montana university system. The program may be an independent plan or part of a larger plan with respect to some or all of the benefits provided. The benefits under the program must be provided through individual annuity contracts, either fixed or variable, or a combination thereof, issued to and owned by the participants in the program.

History: En. Sec. 1, Ch. 494, L. 1987.

19-21-102. Definition of teachers' retirement system. In this chapter, "teachers' retirement system" means the teachers' retirement system provided for in Title 19, chapter 20.

History: En. Sec. 2, Ch. 494, L. 1987.

19-21-103. Duties of board of regents. The board of regents shall:

(1) provide for the administration of the program;

(2) designate the company or companies from which the contracts are to be purchased and approve the form and content of the contracts, taking into consideration the:

(a) nature and extent of the rights and benefits to be provided by the contracts for participants and their beneficiaries;

(b) relationship of these rights and benefits to the amount of contributions to be made;

(c) suitability of these rights and benefits to the needs of the participants and the interests of the Montana university system in the recruitment and retention of administrative officers and members of the instructional and scientific staff; and

(d) ability of the designated company or companies to provide these rights and benefits.

History: En. Sec. 5, Ch. 494, L. 1987.

19-21-104 through 19-21-110 reserved.

19-21-111. Actuarial investigation to determine past service liability compared to contributions required. (1) The legislative auditor shall, using independent actuarial assistance as necessary and in cooperation with the teachers' retirement board and the board of regents, determine the dollar value of past service liability of active, inactive, and retired teachers' retirement system members of the Montana university system as compared to contributions required of the Montana university system on behalf of teachers' retirement system members pursuant to 19-20-605. The legislative auditor shall report any findings to the legislature. The office of the commissioner of higher education shall pay for the determination, required by this section, of past service liability of teachers' retirement system members compared to contributions required of the Montana university system.

(2) If the valuation determines that the percentage contribution established in 19-21-203(5) has an adverse effect on the amortization of the

unfunded liability, then the board of regents shall pay an additional sum over a period of 40 years to rectify the adverse effect.

(3) Changes in the teachers' retirement system occurring after July 1, 1987, that create additional unfunded liabilities may not be considered in the valuation, and the board of regents may not be required to pay any additional sum on that account except to the extent that those changes benefit members of the teachers' retirement system who are employees of the Montana university system.

(4) If the valuation determines that the board of regents is paying an amount in excess of that needed to amortize the unfunded liability, the teachers' retirement board shall credit the board of regents for the excess payments. The board of regents shall credit the active participants in the optional retirement program with the excess payments.

History: En. Sec. 9, Ch. 494, L. 1987; amd. Sec. 1, Ch. 365, L. 1991; amd. Sec. 2, Ch. 178, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 178 in second sentence of (1), before "legislature", deleted "53rd"; in (2) substituted reference to 19-21-203(5) for reference to 19-21-203(2)(b); and made minor changes in style. Amendment effective July 1, 1993.

Part 2

Participation — Benefits

19-21-201. Participation in program. (1) Except as provided in subsection (2), academic and professional administrative personnel with individual contracts under the authority of the board of regents are eligible for and may elect to participate in the optional retirement program instead of the teachers' retirement system. This election must be exercised:

(a) before January 1, 1988, for an eligible person hired before July 1, 1987;

(b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987; and

(c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to participate in the optional retirement program by reason of appointment, promotion, transfer, or reclassification to an eligible position.

(2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the optional retirement plan unless the person is, on the date hired, an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 20.

(b) A person hired who is a member of a public retirement system created in Title 19, chapter 3 or 20, shall elect to:

(i) remain with the retirement system of which the person is a member on the date hired; or

(ii) become a member of the optional retirement plan.

(c) A person eligible to make an election under this subsection (2) shall exercise the election within 30 days of being hired.

(3) The election must be exercised by filing a written notice with the teachers' retirement system and the disbursing officer of the employer. The

election is effective as of the date the notice is filed or January 1, 1988, whichever is later.

(4) If an eligible officer or staff member fails to exercise the election, as provided by this section, that person must remain or become a member of the teachers' retirement system.

(5) An election under this section is not effective unless the notice filed with the disbursing officer of the employer is accompanied by an appropriate application, if one is required, for the issuance of a contract or contracts under the program.

History: En. Sec. 3, Ch. 494, L. 1987; amd. Sec. 3, Ch. 178, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 178 in (1), at beginning, inserted exception clause; and inserted (2) requiring an eligible person hired after July 1, 1993, to become a member of the optional retirement plan unless on the date hired, the person is an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 4, and the person elects within 30 days of being hired to remain with the retirement system of which the person is a member on the date hired. Amendment effective July 1, 1993.

19-21-202. Effect on rights under teachers' retirement system. (1) An election under 19-21-201 to participate in the optional retirement program is a waiver of all rights and benefits under the teachers' retirement system except as provided in this section.

(2) A member of the teachers' retirement system who elects to participate in the optional retirement program is considered, for the purpose of determining eligibility for rights and benefits under that system, to be no longer employed in a capacity that allows active membership in that system as of the effective date of the election. Thereafter, the member is considered an inactive member of the retirement system if qualified under 19-20-303, with the rights and privileges provided under 19-20-603(1). A member who elects to participate in the optional retirement program who does not qualify as an inactive member under 19-20-303 is considered a terminated member of the retirement system under 19-20-304(4).

(3) A person who elects to participate in the optional retirement program is ineligible to be an active member of the teachers' retirement system while continuously employed in a position eligible to participate in the optional retirement program.

History: En. Sec. 4, Ch. 494, L. 1987.

19-21-203. Contributions. (1) Each optional retirement program participant shall contribute an amount equal to the member's contribution required under 19-20-602. The board of regents shall contribute an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation.

(2) (a) On or after July 1, 1997, the board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) The sum of the participant's and employer's contributions made under subsection (2)(a) must remain at 12% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code of 1954 or by employer pick-up under section 414(h)(2) of that code.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the regents' contribution to the designated company or companies for the benefit of the participant.

(5) (a) The board of regents shall contribute the amounts specified in subsection (5)(b) to the teachers' retirement system to discharge the obligation incurred by the employees of the Montana university system who elect or who are required to become members of the optional retirement plan. The contributions paid by the board are for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system and must be consistent with the requirements of 19-21-111.

(b) (i) Beginning July 1, 1993, through June 30, 1997, the contributions to be made by the board of regents must equal 2.503% of earned compensation attributable to optional retirement participants.

(ii) Beginning July 1, 1997, the contribution rate must be adjusted, pursuant to 19-20-201, based on the actual experience of the members of the Montana university system who are members of the teachers' retirement system, and must be set at a rate sufficient to amortize the past service liability of the university system members by July 1, 2033.

History: En. Sec. 6, Ch. 494, L. 1987; amd. Sec. 4, Ch. 178, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 178 at end of (1) substituted "an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation" for "an amount equal to the employer contribution required under 19-4-605"; in former (2), (2)(a), and (2)(a)(i) deleted requirement that the Board of Regents' contribution be apportioned and paid to the designated companies in an amount equal to the greater of the employer contribution to the Teachers' Retirement System not used to amortize past service unfunded liability or in an amount that, when added to the participant's contribution, is equal to 10% of the participant's contribution; deleted (2)(b) providing that the balance of the contribution went to the Teachers' Retirement System; inserted (2) allowing the Board to reduce the participant's contribution to an amount not less than 6% of the participant's earned compensation and to increase the employer's contribution rate to an amount not exceeding 6% and requiring the sum of the participant's and employer's contribution to remain at 12%; and inserted (5) pertaining to contributions by the Board of Regents to the Teachers' Retirement System for employees of the University System for past service liability incurred by active, inactive, and retired members of the Teachers' Retirement System. Amendment effective July 1, 1993.

19-21-204 through 19-21-210 reserved.

19-21-211. Payment of benefits. No retirement, death, or other benefit may be paid by the state or the board of regents under the optional retirement program. Benefits are payable to a participant and his beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

History: En. Sec. 7, Ch. 494, L. 1987.

19-21-212. Exemption from taxation, legal process, and assessments. All contracts, benefits, and contributions under the optional retirement program and the earnings thereon are:

(1) except for a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii), exempt from any state, county, or municipal tax;

(2) not subject to execution, garnishment, attachment, or other process;

(3) not covered or assessable by an insurance guaranty association; and

(4) unassignable except as specifically provided in the contracts.

History: En. Sec. 8, Ch. 494, L. 1987; amd. Sec. 17, Ch. 823, L. 1991.

CHAPTERS 22 THROUGH 49

RESERVED

CHAPTER 50

DEFERRED COMPENSATION

Part 1 — General Provisions

19-50-101. Definitions.
19-50-102. Deferred compensation programs permitted — rules.
19-50-103. No effect on other retirement programs — taxes deferred.

Part 2 — Administration

19-50-201. Department authorized to make contracts with political subdivisions.
19-50-202. Administration of program.
19-50-203. Payments authorized.
19-50-204. Public entity not to be liable.
19-50-205 reserved.
19-50-206. Functions of advisory council.

Part 1

General Provisions

19-50-101. Definitions. For the purposes of this chapter, unless a different meaning is plainly implied by the context, the following definitions apply:

(1) "Administrator" means the department of administration created by 2-15-1001 or an appropriate officer of a political subdivision.

(2) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.

(3) "Deferred compensation" means that income which an employee may legally defer in a deferred compensation plan established under this chapter pursuant to the rulings of the internal revenue service and which, while invested, is exempt from state and federal income tax on the employee's contribution and on the interest, dividends, and capital gains until ultimately distributed to the employee.

(4) "Department" means the department of administration created by 2-15-1001.

(5) "Eligible deferred compensation plan" means a plan meeting the requirements of section 457 of the Internal Revenue Code.

(6) "Employee" means any person, including independent contractors and elected officials, receiving compensation from the state or a political subdivision for performing services.

(7) "Fund" means the state deferred compensation investment account.

(8) "Participant" means an employee enrolled in the plan.

(9) "Political subdivision" means any city, town, county, or other political subdivision of the state of Montana.

History: En. 68-2704 by Sec. 4, Ch. 264, L. 1974; R.C.M. 1947, 68-2704; amd. Sec. 1, Ch. 472, L. 1981; Sec. 19-2-101, MCA 1991; redes. 19-50-101 by Code Commissioner, 1993.

19-50-102. Deferred compensation programs permitted — rules. (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code of 1954, as amended or superseded, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of his compensation for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee's annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The amount of compensation deferred under this chapter may be used to purchase:

(a) shares in a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund shall be credited to the fund. These funds may be commingled with other state investment funds, but separate accounts must be maintained for participants in the state deferred compensation investment fund. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner; or

(d) any combination of subsections (a), (b), or (c) above, as specified by the participant. The shares, accounts, or contracts so purchased are the exclusive property of and stand in the name of the state of Montana or a political subdivision until distributed to an employee in a manner provided in the plan agreement established by the administrator.

(5) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(6) The department or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter.

History: **En. 68-2701 by Sec. 1, Ch. 264, L. 1974; amd. Sec. 1, Ch. 60, L. 1977; R.C.M. 1947, 68-2701; amd. Sec. 2, Ch. 472, L. 1981; Sec. 19-2-102, MCA 1991; redes. 19-50-102 by Code Commissioner, 1993.**

19-50-103. No effect on other retirement programs — taxes deferred. The deferred compensation program established by this chapter shall exist and serve in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code of 1954, established by the state or a political subdivision, and no deferral of income under the deferred compensation program shall affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program shall not be subject to taxation until distribution is actually made to the participant or his beneficiary because of separation from service, retirement, or unforeseeable emergency. For purposes of this chapter any qualified private pension plans now in existence shall qualify.

History: **En. 68-2706 by Sec. 6, Ch. 264, L. 1974; R.C.M. 1947, 68-2706; amd. Sec. 3, Ch. 472, L. 1981; Sec. 19-2-103, MCA 1991; redes. 19-50-103 by Code Commissioner, 1993.**

Part 2

Administration

19-50-201. Department authorized to make contracts with political subdivisions. (1) Effective July 1, 1983, a political subdivision may become a contracting employer and make all or specified groups of its employees eligible to participate in the state-administered deferred compensation program by a contract entered into and between the department and the legislative body of the political subdivision. The contract may include any provisions that are consistent with this chapter and necessary for the administration of the deferred compensation program.

(2) The approval and termination of the contract shall be subject to the following provisions:

(a) The legislative body of the political subdivision shall adopt a resolution to enter into a contract with the department authorizing its employees to participate in the state-administered deferred compensation program. The resolution must contain a summary of the major provisions of the state-administered deferred compensation program.

(b) The contract must specify that the political subdivision agrees that the department is the administrator of the deferred compensation program and agrees to the rules and conditions established by the department for the proper administration of the plan.

(c) The contract may be revoked or amended in the manner prescribed in the original approval of contracts.

History: **En. 68-2702 by Sec. 2, Ch. 264, L. 1974; amd. Sec. 2, Ch. 60, L. 1977; R.C.M. 1947, 68-2702; amd. Sec. 4, Ch. 472, L. 1981; Sec. 19-2-201, MCA 1991; redes. 19-50-201 by Code Commissioner, 1993.**

19-50-202. Administration of program. The deferred compensation program shall be administered by the department or the appropriate officer designated by a political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The administrator shall protect the interests of program participants and safeguard the assets of the deferred compensation plan and shall contract with private corporations, institutions, or individuals for administrative and marketing services. The administrator may solicit bids for options under 19-50-102. All contracts with marketing representatives must provide that all options in 19-50-102 be presented in an unbiased manner and in a manner so as to conform to applicable rules promulgated by the administrator, be reported on a periodic basis to all employees participating in eligible deferred compensation plans, and not be the subject of unreasonable solicitation of employees to participate in the program. All costs or fees in relation to the marketing of options provided under 19-50-102 shall be paid by the underwriting companies selected by the administrator or by the interest earnings accruing to the assets of the state deferred compensation investment fund.

History: **En. 68-2703 by Sec. 3, Ch. 264, L. 1974; R.C.M. 1947, 68-2703; amd. Sec. 5, Ch. 472, L. 1981; Sec. 19-2-202, MCA 1991; redes. 19-50-202 by Code Commissioner, 1993.**

19-50-203. Payments authorized. Notwithstanding any other provision of law to the contrary, the department or a political subdivision is hereby authorized to make payments to eligible deferred compensation plans designated by this chapter. Such payments shall not be construed to be a prohibited use of the general assets of the state or a political subdivision.

History: **En. 68-2705 by Sec. 5, Ch. 264, L. 1974; R.C.M. 1947, 68-2705; amd. Sec. 7, Ch. 472, L. 1981; Sec. 19-2-203, MCA 1991; redes. 19-50-203 by Code Commissioner, 1993.**

19-50-204. Public entity not to be liable. There shall be no financial liability of the state or a political subdivision for any investment losses incurred by any eligible deferred compensation plan established under this chapter.

History: **En. 68-2707 by Sec. 7, Ch. 264, L. 1974; R.C.M. 1947, 68-2707; amd. Sec. 8, Ch. 472, L. 1981; Sec. 19-2-204, MCA 1991; redes. 19-50-204 by Code Commissioner, 1993.**

19-50-205 reserved.

19-50-206. Functions of advisory council. (1) The department shall meet and consult with the advisory council before negotiating, contracting, or modifying deferred compensation plans.

(2) The advisory council shall meet at least quarterly to review existing deferred compensation plans and to advise the department on the administration of the program.

History: **En. Sec. 6, Ch. 472, L. 1981; Sec. 19-2-206, MCA 1991; redes. 19-50-206 by Code Commissioner, 1993.**

TITLE 20

EDUCATION

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CHAPTER 1

GENERAL PROVISIONS

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Part 1
Definitions

20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university.

(2) "Average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) The "board of public education" is the board created by Article X, section 9, subsection (3), of the 1972 Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1505.

(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means any person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) "K-12 vocational education" means vocational education in public school kindergarten through grade 12.

(9) "Principal" means any person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher shall be construed as including a principal, as herein defined.

(10) "Pupil" means any child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but has not

yet reached his 19th birthday and who is enrolled in a school established and maintained under the laws of the state of Montana at public expense. For purposes of calculating the average number belonging (ANB) pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached his 19th birthday by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

(11) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(12) "Regents" means the board of regents of higher education.

(13) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and shall include any food service financially assisted through funds or commodities provided by the United States government.

(14) The "state board of education" is the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the 1972 Montana constitution.

(15) "State university" means the Montana state university, located at Bozeman.

(16) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the constitution of Montana.

(17) "System" means the Montana university system.

(18) "Teacher" means any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher shall also include any person for whom an emergency authorization of employment of such person has been issued under the provisions of 20-4-111.

(19) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(20) "Textbook dealer" means any party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state of Montana.

(21) "Trustees" means the governing board of a district.

(22) "University" means the university of Montana, located at Missoula.

(23) "Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education shall include guidance and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment.

(24) "Vocational-technical center" means an institution used principally for the provision of vocational-technical education to persons who qualify as vocational-technical students. These centers are designated by the board of regents upon direction by the legislature. All other public or private institutions or schools are hereby prohibited from using this title.

(25) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a vocational-technical center, a unit of the Montana university system, or a community college as designated by the board of regents.

History: (1), (14), (17), (19), (24)En. 75-8402 by Sec. 2, Ch. 2, L. 1971; Sec. 75-8402, R.C.M. 1947; (2)En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975; Sec. 75-6902, R.C.M. 1947; (3) thru (5), (16)En. Sec. 1, Ch. 344, L. 1973; Sec. 75-5609, R.C.M. 1947; (6)En. 75-5801 by Sec. 19, Ch. 5, L. 1971; amd. Sec. 28, Ch. 100, L. 1973; Sec. 75-5801, R.C.M. 1947; (7), (11), (20)En. 75-6101 by Sec. 82, Ch. 5, L. 1971; Sec. 75-6101, R.C.M. 1947; (8) thru (10), (25)En. Sec. 404, Ch. 5, L. 1971; (amd. Sec. 4, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 4, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); Sec. 75-7701, R.C.M. 1947; (12)En. 75-6301 by Sec. 114, Ch. 5, L. 1971; Sec. 75-6301, R.C.M. 1947; (13)En. 75-7401 by Sec. 365, Ch. 5, L. 1971; Sec. 75-7401, R.C.M. 1947; (15)En. 75-8001 by Sec. 442, Ch. 5, L. 1971; Sec. 75-8001, R.C.M. 1947; (18)En. 75-5701 by Sec. 10, Ch. 5, L. 1971; amd. Sec. 27, Ch. 100, L. 1973; Sec. 75-5701, R.C.M. 1947; (21), (22)En. 75-7601 by Sec. 393, Ch. 5, L. 1971; Sec. 75-7601, R.C.M. 1947; (23)En. 75-5901 by Sec. 30, Ch. 5, L. 1971; Sec. 75-5901, R.C.M. 1947; R.C.M. 1947, 75-5609, 75-5701, 75-5801, 75-5901(part), 75-6101, 75-6301, 75-6902(part), 75-7401, 75-7601, 75-7701, 75-8001, 75-8402; amd. Sec. 1, Ch. 334, L. 1979; amd. Sec. 1, Ch. 558, L. 1979; amd. Sec. 8, Ch. 598, L. 1979; amd. Sec. 1, Ch. 388, L. 1987; amd. Sec. 7, Ch. 658, L. 1987.

Part 2
Miscellaneous Provisions

20-1-201. School officers not to act as agents. The superintendent of public instruction or members of his staff, county superintendent or members of his staff, trustee, or district employee shall not act as an agent or solicitor in the sale or supply of goods or services to a district. No such person shall assist or receive a reward from an agent or solicitor of goods or services for a district. Any such person violating this section shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $50 or more than $200 and shall be liable to removal from his position. The penalties provided by this section shall not be applicable if the charge and conviction are made under the provisions of 20-7-608.

History: En. 75-8303 by Sec. 487, Ch. 5, L. 1971; R.C.M. 1947, 75-8303.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

Proscribed acts related to contracts and claims, Title 2, ch. 2, part 2.

Textbook sales regulation, Title 20, ch. 7, part 6.

Deceptive business practices, 45-6-317, 45-6-318.

20-1-202. Oath of office. Any person elected or appointed to any public office authorized by this title shall take the oath of office before qualifying for and assuming the office. In case an officer has a written appointment or commission, his oath shall be endorsed thereon, otherwise it may be taken orally, and, in either case, it may, without charge or fee, be sworn to before an officer authorized to administer oaths for such public office.

History: En. 75-8304 by Sec. 488, Ch. 5, L. 1971; R.C.M. 1947, 75-8304.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Oath defined, 1-1-201.

Declaration in lieu of oath, 1-6-104.

Oath of Board of Regents, 2-15-1508.

Oath of Superintendent of Public Instruction and Deputy, 20-3-102, 20-3-103.

Oath of County Superintendent of Schools, 20-3-202.

County Superintendent's power to administer oath to trustees, 20-3-205.

Oath of school trustees, 20-3-307, 20-3-309.

Teachers' oath, 20-4-104.

Oaths of community college district trustees, 20-15-210, 20-15-222.

20-1-203. Delivering items to successor. Whenever any member of the trustees, superintendent, principal, or clerk of the district is replaced by election or otherwise, he shall immediately deliver all books, papers, and moneys pertaining to the position to his successor. Any such person who shall refuse to do so or who shall willfully destroy any such material or misappropriate any moneys entrusted to him shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not more than $100.

History: En. 75-5926 by Sec. 55, Ch. 5, L. 1971; R.C.M. 1947, 75-5926.

Cross-References

Personal liability of trustees, 20-3-332.

Destruction of public property, 45-6-101.

20-1-204. County attorney's duties. Upon request of the county superintendent or the trustees of any school district or community college district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party; however, the trustees of any school district or community college district may, in their discretion, employ any other attorney licensed in Montana to perform any legal services in connection with school or community college board business.

History: En. 75-8305 by Sec. 489, Ch. 5, L. 1971; amd. Sec. 2, Ch. 263, L. 1971; amd. Sec. 1, Ch. 22, L. 1974; amd. Sec. 6, Ch. 121, L. 1977; R.C.M. 1947, 75-8305; amd. Sec. 1, Ch. 273, L. 1979.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

County Attorney to assist in school district bond proceedings, 20-9-436.

20-1-205. Conflict of interest. In the event there should arise a conflict of interest relating solely to the performance of the official duties of the county attorney and which does not relate to a conflict of interest involving the private employment of the county attorney, the trustees of any school district shall employ any other attorney licensed in Montana.

History: En. Sec. 2, Ch. 22, L. 1974; R.C.M. 1947, 75-8305.1.

Cross-References

Limitation on activities of County Attorneys and Deputies, 7-4-2704.

Conflicts of interest, letting contracts, and calling for bids, 20-9-204.

20-1-206. Disturbance of school — penalty. Any person who shall willfully disturb any school or any school meeting shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $10 or more than $100.

History: En. 75-8306 by Sec. 490, Ch. 5, L. 1971; R.C.M. 1947, 75-8306.

Cross-References

Duties of pupils — sanctions, 20-5-201.

Disrupting of public meeting, 45-8-101.

20-1-207. Penalty for violation of school laws. Unless otherwise specifically provided by law, any person who violates any provision of this title is guilty of a misdemeanor and if convicted by a court of competent jurisdiction shall be punished by a fine of not less than $20 or more than $200 or by imprisonment in the county jail for not less than 5 days or more than 30 days or by both such fine and imprisonment.

History: En. 75-8307 by Sec. 491, Ch. 5, L. 1971; amd. Sec. 29, Ch. 266, L. 1977; R.C.M. 1947, 75-8307.

Cross-References

Fines and penalties proceeds for elementary county equalization, 20-9-332.

Official misconduct, 45-7-401.

20-1-208. Educational impact statements. When a county superintendent of schools finds that a person intends to construct or locate a major industrial facility, as defined in 20-9-407, or intends to open a new strip mine, as defined by 82-4-103, within the county, the superintendent may require such person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the major industrial facility or strip mine. The statement shall indicate:

(1) the number of persons to be employed during the construction or preparation and during the operation of the major industrial facility or strip mine and their anticipated residential distribution;

(2) the number and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;

(3) the number of school age children anticipated to be living with the persons enumerated in the preceding categories; and

(4) the time periods covered by each preceding estimate.

History: En. 75-8312 by Sec. 1, Ch. 119, L. 1975; amd. Sec. 30, Ch. 266, L. 1977; R.C.M. 1947, 75-8312.

Cross-References

Taxation of major new industrial facility in school district, 20-9-407.

Major facility siting, Title 75, ch. 20.

Strip and underground mine siting, Title 82, ch. 4, part 1.

20-1-209. Judicial enforcement. A district court, upon petition of a county, may enforce 20-1-208 with appropriate orders.

History: En. 75-8313 by Sec. 2, Ch. 119, L. 1975; R.C.M. 1947, 75-8313.

Cross-References

Uniform Declaratory Judgments Act, Title 27, ch. 8.

Injunctions, Title 27, ch. 19.

20-1-210. Nonfaculty coaches in private high schools. (1) A private or parochial high school is not bound by any rule or policy which prohibits the employment or association of part-time assistant athletic instructors with a high school who are not members of the regular faculty of the school, and no such school may be denied the privilege of participating in interscholastic competition with any school in this state because of the employment or association of such assistant athletic instructors with that school.

(2) Upon the complaint of an interested person, a district court may enjoin any association or combination of high schools from conspiring to violate this section or acting in concert in violation thereof.

History: En. 75-8314 by Sec. 1, Ch. 350, L. 1977; R.C.M. 1947, 75-8314.

Cross-References

Injunctions, Title 27, ch. 19.

Athletic event officials excluded from workers' compensation coverage, 39-71-401.

20-1-211. Expenses of officers or employees attending conventions — educational associations. (1) After July 1, 1921, no school district officer or employee of any school district shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gatherings as said officer or employee may by virtue of his office find it necessary to attend.

(2) The board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees or any other strictly educational association and authorize the payment of dues to such association and the necessary traveling expenses of employees or members of said board to attend meetings of such association or other meetings called for the express purpose of considering educational matters.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part).

Cross-References

Trustee travel reimbursement and compensation of secretary, 20-3-311.

Attendance at state teachers' association annual session, 20-4-304.

20-1-212. Destruction of records by school officer. (1) Upon the order of the board of trustees and with the written approval of the local government records destruction subcommittee provided for in 2-6-403, a school officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office.

(2) Student records must be permanently kept, and employment records must be kept for 10 years after termination.

History: En. Sec. 2, Ch. 92, L. 1935; re-en. Sec. 455.2, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1967; amd. Sec. 79, Ch. 348, L. 1974; amd. Sec. 36, Ch. 213, L. 1975; R.C.M. 1947, 59-514(2); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 543, L. 1983; amd. Sec. 15, Ch. 420, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 420 in (1), at beginning, deleted "Unless destruction may be otherwise required by federal law, a school officer may destroy old worthless reports, papers, or records in his office: (a) that have served their purpose and that are substantiated by permanent records", before "approval" inserted "written", after "approval of the" substituted reference to local government records destruction subcommittee for "department of commerce", at end deleted "after a retention period of 5 years", and inserted remainder of subsection providing authority for school officer to destroy no longer needed records; substituted (2) concerning student records and employment records for "For the purposes of subsection (1), old worthless reports, papers, or records do not include student records and records of employment. Such records or copies of such records must be permanently kept"; and made minor changes in style. Amendment effective April 20, 1993.

Cross-References

Destruction of certain financial records, 20-9-215.

Part 3

School Terms and Holidays — Released Time

20-1-301. School fiscal year. The school fiscal year shall begin on July 1 and end on June 30. At least 180 school days of pupil instruction shall be conducted during each school fiscal year, except that 175 days of pupil instruction for graduating seniors may be sufficient as provided in 20-9-313, or unless a variance for kindergarten has been granted under 20-1-302 or a district is granted a variance under the provisions of chapter 9, part 8, of this title. For any elementary or high school district that fails to provide for at least 180 school days of pupil instruction, the superintendent of public instruction shall reduce the county equalization as defined in 20-9-334 and the state equalization as defined in 20-9-343 for the district for that school year by 1/90th for each school day less than 180 school days.

History: En. 75-7402 by Sec. 366, Ch. 5, L. 1971; amd. Sec. 2, Ch. 373, L. 1974; R.C.M. 1947, 75-7402; amd. Sec. 6, Ch. 288, L. 1979; amd. Sec. 1, Ch. 148, L. 1981; amd. Sec. 1, Ch. 460, L. 1983.

Cross-References

Management of school funds by County Treasurer, 7-6-2801.

Elementary district abandonment, 20-6-209.

High school district abandonment, 20-6-307.

Apportionment of county equalization money by County Superintendent, 20-9-334.

Formula for apportionment of county equalization money, 20-9-335.

Emergency school closure, Title 20, ch. 9, part 8.

20-1-302. School day and week. Subject to 20-1-308, a school day of pupil instruction shall be at least 2 hours for kindergartens and all other preschool programs, unless a variance has been granted by the superintendent of public instruction in accordance with the policies of the board of public education, at least 4 hours for grades 1 through 3, and at least 6 hours for grades 4 through 12. The number of hours in any one school day for grades 4 through 12 may be reduced by 1 hour if the total number of hours in the school week is not less than 30 hours. The number of hours in a school week may be reduced, in an emergency, with the approval of the board of public education.

History: En. 75-7403 by Sec. 367, Ch. 5, L. 1971; amd. Sec. 1, Ch. 417, L. 1973; amd. Sec. 3, Ch. 373, L. 1974; amd. Sec. 1, Ch. 130, L. 1977; R.C.M. 1947, 75-7403.

Cross-References

Duty of Board of Public Education to approve school day, 20-2-121(5).

Calculation of average number belonging if variance granted, 20-9-311.

20-1-303. Conduct of school on Saturday or Sunday prohibited — exception. Except as provided, pupil instruction shall not be conducted on Saturday or Sunday. In emergencies, pupil instruction may be conducted on a Saturday when it is approved by the superintendent of public instruction in accordance with the policies adopted by the board of public education.

History: En. 75-7404 by Sec. 368, Ch. 5, L. 1971; R.C.M. 1947, 75-7404.

Cross-References

Duty of Board of Public Education to adopt policy regarding school on Saturdays, 20-2-121(6).

Power of Superintendent of Public Instruction to approve school on Saturdays, 20-3-106(22).

20-1-304. Pupil-instruction-related day. A pupil-instruction-related day is a day of teacher activities devoted to improving the quality of instruction. The activities may include but are not limited to inservice training, attending state meetings of teacher organizations, and conducting parent conferences. A maximum of 7 pupil-instruction-related days may be conducted during a school year, with a minimum of 3 of the days for instructional and professional development meetings or other appropriate inservice training, provided that the days are approved by the superintendent of public instruction in accordance with the policy adopted by the board of public education. The days may not be included as a part of the required minimum of 180 days of pupil instruction.

History: En. 75-7405 by Sec. 369, Ch. 5, L. 1971; R.C.M. 1947, 75-7405; amd. Sec. 1, Ch. 638, L. 1989.

Cross-References

Duty of Board of Public Education to adopt policy on pupil-instruction-related days, 20-2-121(6).

Power of Superintendent of Public Instruction to approve school on pupil-instruction-related days, 20-3-106(22).

Attendance at state teachers' association annual session, 20-4-304.

Instructional assistance by Superintendent of Public Instruction, 20-7-114.

School closure by declaration of emergency, 20-9-806.

20-1-305. School holidays. (1) Pupil instruction and pupil-instruction-related days shall not be conducted on the following holidays:

(a) New Year's Day (January 1);

(b) Memorial Day (last Monday in May);

(c) Independence Day (July 4);

(d) Labor Day (first Monday in September);

(e) Thanksgiving Day (fourth Thursday in November);

(f) Christmas Day (December 25);

(g) State and national election days when the school building is used as a polling place and the conduct of school would interfere with the election process at the polling place.

(2) When these holidays fall on Saturday or Sunday, the preceding Friday or the succeeding Monday shall not be a school holiday.

History: En. 75-7406 by Sec. 370, Ch. 5, L. 1971; amd. Sec. 1, Ch. 159, L. 1974; R.C.M. 1947, 75-7406.

Cross-References

Legal holidays, 1-1-216.

Teacher contract not to require teaching on school holidays, 20-4-201.

20-1-306. Commemorative exercises on certain days. (1) All districts shall conduct appropriate exercises during the school day on the following commemorative days:

(a) Lincoln's Birthday (February 12);

(b) Washington's Birthday (February 22);

(c) Arbor Day (last Friday in April);

(d) Flag Day (June 14);

(e) Citizenship Day (September 17);

(f) Columbus Day (October 12);

(g) Pioneer Day (November 1);

(h) Other days designated by the legislature or governor as legal holidays.

(2) When these commemorative days fall on Saturday or Sunday, exercises may be conducted the preceding Friday.

History: En. 75-7407 by Sec. 371, Ch. 5, L. 1971; R.C.M. 1947, 75-7407.

Cross-References

Legal holidays, 1-1-216.

Observance of right to keep and bear arms, 1-1-224.

Official observance of Montana's hunting heritage, 1-1-226.

20-1-307. Provisions of school code excepted. Nothing contained in 1-1-216 defining legal holidays shall be deemed to amend or change the provisions of 20-1-305 and 20-1-306, said sections being hereby expressly declared to define legal holidays for school purposes only.

History: En. Sec. 2, Ch. 21, L. 1921; re-en. Sec. 11, R.C.M. 1921; re-en. Sec. 11, R.C.M. 1935; amd. Sec. 1, Ch. 240, L. 1975; R.C.M. 19-108.

20-1-308. Religious instruction released time program. (1) The trustees of an elementary or high school district may provide for a religious instruction released time program under which a pupil may be released from regular school attendance for a period not to exceed 2 hours per week for the purpose of receiving religious instruction upon written request, renewed at least annually, of the pupil's parent or guardian.

(2) No religious instruction released time program may be established or administered in such a way that public school property is utilized for the purpose of religious instruction.

(3) No public moneys may be used, directly or indirectly, for such religious instruction.

(4) Any period for which a pupil is released under a religious instruction released time program is part of the school day and week for purposes of 20-1-301, 20-1-302, 20-5-103, 20-9-311, and all other provisions of Title 20, and such release may not adversely affect the pupil's attendance record.

History: En. 75-7403.1 by Sec. 2, Ch. 130, L. 1977; R.C.M. 1947, 75-7403.1.

Cross-References

Equal protection of laws guaranteed, Art. II, sec. 4, Mont. Const.

No appropriation to be made for religious purposes, Art. V. sec. 11, Mont. Const.

Discrimination in education prohibited, Art. X, sec. 7, Mont. Const.

Sectarian publications prohibited and prayer permitted, 20-7-112.

Part 4

Fire Drills and Safety Patrols

20-1-401. Fire drills to be conducted regularly. Fire exit drills shall be conducted regularly in accordance with the applicable provisions of the following sections.

History: En. 75-8308.1 by Sec. 1, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.1.

20-1-402. Number of fire drills required — avoiding severe cold weather. There shall be at least eight fire exit drills a year in schools. In climates where the weather is severe during the winter months, weekly drills should be held at the beginning of the school term to complete the required number of drills before cold weather so as not to endanger the health of the pupils.

History: En. Sec. 2, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.2.

20-1-403. Times of drills to vary. Drills shall be executed at different hours of the day or evening, during the changing of classes, when the school is at assembly, during the recess or gymnastic periods, etc., so as to avoid distinction between drills and actual fires.

History: **En. Sec. 3, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.3.**

20-1-404. Drill to sound on fire alarm system. All fire exit drill alarms shall be sounded on the fire alarm system and not on the signal system used to dismiss classes.

History: **En. Sec. 4, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.4.**

20-1-405. Fire department to be called for actual fire. Whenever any of the school authorities determine that an actual fire exists, they shall immediately call the local fire department using the public fire alarm system or such other facilities as are available.

History: **En. Sec. 5, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.5.**

20-1-406. Recall signal to be distinct — control of signal. The recall signal shall be one that is separate and distinct from and cannot be mistaken for any other signals. Such signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock.

History: **En. Sec. 6, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.6.**

20-1-407. Inspection of exits — cooperation with fire department in drills. It shall be the duty of the school authorities to inspect all exit facilities periodically, in order to make sure that all stairways, doors, and other exits are in proper condition, and cooperate with local fire department authorities in conducting fire drills.

History: **En. Sec. 7, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.7.**

20-1-408. School safety patrols. (1) The trustees of any district or the administration of any private school may organize and supervise school safety patrols for a school under their authority. The purpose of school safety patrols is to influence and encourage other pupils of the school to refrain from crossing public highways at points other than regular crossings and to direct pupils as to when and where to cross highways.

(2) The school safety patrol shall be formed from the children of the school who are 9 years of age or more or, if there are none, who are of the highest grade of such school. Before any child may serve on the school safety patrol, the parent or guardian of such child shall give written consent for his child to serve on the school safety patrol.

(3) No liability attaches to a member of the school safety patrol or parent or guardian by virtue of the organization, maintenance, or operation of such school safety patrol because of injury sustained by any pupil.

(4) Identification and operation of school safety patrols shall be uniform throughout the state, and the method of identification and signals to be used shall be as prescribed by the superintendent of public instruction in cooperation with the Montana department of justice.

(5) Any municipality, city, or town of this state may provide for the training of members of the school safety patrol at any authorized school patrol

camp located in this state and may pay the expense necessarily incurred in providing such training out of any funds available for such purpose.

History: **En. 75-8310 by Sec. 494, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1977; R.C.M. 1947, 75-8310.**

Cross-References

Duty of Superintendent of Public Instruction to prescribe identification and signals for safety patrols, 20-3-106(34).

Traffic education, Title 20, ch. 7, part 5.

Violation of safety patrol signals, 61-8-502.

CHAPTER 2

STATE BOARDS AND COMMISSIONS

Part 1 — State Board of Education—Board of Public Education—Board of Regents

20-2-101. Combined boards as state board — budget review — officers — meetings — quorum.
20-2-102 through 20-2-110 reserved.
20-2-111. Officers of boards — quorum.
20-2-112. Quarterly meetings of boards — called meetings — notice of meetings.
20-2-113. Per diem of board members — expenses.
20-2-114. Adoption of rules — seal — record of proceedings.
20-2-115. Rules with substantial financial impact — fiscal note — effect without funding.
20-2-116 through 20-2-120 reserved.
20-2-121. Board of public education — powers and duties.
20-2-122. Executive secretary to board of public education — staff.
20-2-123 through 20-2-130 reserved.
20-2-131. Commissioner of higher education — duties — compensation — staff.

Parts 2 and 3 reserved

Part 4 — Commission on Federal Higher Education Programs

20-2-401. Definition.
20-2-402. Purpose.
20-2-403. Duties.

Part 1

State Board of Education — Board of Public Education — Board of Regents

Part Cross-References

Boards of Education created — duties, Art. X, sec. 9, Mont. Const.; Title 2, ch. 15, part 15.

20-2-101. Combined boards as state board — budget review — officers — meetings — quorum. (1) The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning and for coordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a nonvoting participant at all meetings of the state board of education.

(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least twice yearly as the state board of education.

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight appointed members, four each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents.

History: **En. Sec. 7, Ch. 344, L. 1973; R.C.M. 1947, 75-5615; amd. Sec. 2, Ch. 21, L. 1985.**

Cross-References

Regents' powers and duties, 20-25-301.

20-2-102 through 20-2-110 reserved.

20-2-111. Officers of boards — quorum. (1) The board of public education and the board of regents may each select a chairman from among their appointed members.

(2) The executive secretary shall serve as secretary to the board of public education, and the commissioner of higher education serves as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

(4) The executive secretary shall serve as a liaison between the board of public education and the superintendent of public instruction and shall carry out other such duties as assigned by the board of public education.

History: **En. Sec. 4, Ch. 344, L. 1973; amd. Sec. 2, Ch. 268, L. 1977; R.C.M. 1947, 75-5612; amd. Sec. 3, Ch. 21, L. 1985.**

Cross-References

Regents' powers and duties, 20-25-301.

20-2-112. Quarterly meetings of boards — called meetings — notice of meetings. (1) The board of public education and the board of regents shall meet at least quarterly.

(2) Other meetings of either board may be called by the governor, by the chairman, by the secretary, or by four appointed members.

(3) The secretary to each board shall mail notice to each member at least 7 days in advance of all meetings of the respective board.

History: **En. Sec. 5, Ch. 344, L. 1973; R.C.M. 1947, 75-5613; amd. Sec. 4, Ch. 21, L. 1985.**

Cross-References

Open meetings, Title 2, ch. 3, part 2.

20-2-113. Per diem of board members — expenses. Appointed members of the board of public education and the board of regents shall be compensated and receive travel expenses as provided for in 2-15-124 for each day in attendance at board meetings or in the performance of any duty or service as a board member.

History: En. Sec. 6, Ch. 344, L. 1973; amd. Sec. 50, Ch. 439, L. 1975; R.C.M. 1947, 75-5614; amd. Sec. 6, Ch. 650, L. 1985.

20-2-114. Adoption of rules — seal — record of proceedings. The board of public education, the board of regents, and the state board of education each shall:

(1) adopt rules consistent with the constitution or laws of the state of Montana necessary for its own government or the proper execution of the powers and duties conferred upon it by law;

(2) adopt and use an official seal to authenticate its official acts; and

(3) keep a record of its proceedings.

History: En. Sec. 8, Ch. 344, L. 1973; R.C.M. 1947, 75-5616.

Cross-References

Seals defined, 1-4-201.

Manner of making seal, 1-4-202.

Regents' rulemaking power exempt from Montana Administrative Procedure Act, 2-4-102.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

20-2-115. Rules with substantial financial impact — fiscal note — effect without funding. (1) When developing rules, policies, and standards under 20-2-121(6), (7), (9), and (11), the board of public education shall determine the financial impact of the rule, policy, or standard on school districts.

(2) The superintendent of public instruction shall prepare a fiscal note for submission to the board, using criteria and assumptions developed by the board. The fiscal note must be prepared within 30 days of a request unless the board agrees to a longer time. The board may also accept other testimony and exhibits on the financial impact to school districts before proceeding to rulemaking.

(3) If the financial impact of the proposed rule, policy, or standard is found by the board to be substantial, the board may not implement the rule until July 1 following the next regular legislative session and shall request the next legislature to fund implementation of the proposed rule, policy, or standard through the BASE funding program. A substantial financial impact is an amount that cannot be readily absorbed in the budget of an existing school district program.

(4) A proposed rule, policy, or standard not found by the board to have a substantial financial impact on school districts or funded by the legislature may be implemented at any time.

History: En. Sec. 1, Ch. 691, L. 1985; amd. Sec. 1, Ch. 395, L. 1987; amd. Sec. 55, Ch. 633, L. 1993.

Compiler's Comments

Name Change — Short Form Amendment: Section 55(1), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program" in this section.

Cross-References

Duties of Board of Public Education, Art. X, sec. 9, Mont. Const.

Economic impact statement, 2-4-405.

BASE funding program, 20-9-303.

20-2-116 through 20-2-120 reserved.

20-2-121. Board of public education — powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of BASE aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 20-1-303 and 20-1-304;

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(9) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(10) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131;

(11) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904;

(12) adopt rules for student assessment in the public schools; and

(13) perform any other duty prescribed from time to time by this title or any other act of the legislature.

History: En. 75-5607 by Sec. 8, Ch. 5, L. 1971; (amd. Sec. 15, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 15, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 1, Ch. 266, L. 1977; R.C.M. 1947, 75-5607; amd. Sec. 1, Ch. 511, L. 1979; amd. Sec. 9, Ch. 598, L. 1979; amd. Sec. 1, Ch. 94, L. 1983; amd. Sec. 1, Ch. 312, L. 1983; amd. Sec. 1, Ch. 377, L. 1987; amd. Sec. 40, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (3) substituted "BASE" for "state equalization". Amendment effective July 1, 1993.

Cross-References

Regents' powers and duties, 20-25-301.

20-2-122. Executive secretary to board of public education — staff. The board of public education may:

(1) appoint an executive secretary and employ other persons within legislatively authorized appropriations;

(2) prescribe the term, duties, and compensation of its executive secretary;

(3) provide office space for its staff to carry out its duties.

History: En. 75-5607.2 by Sec. 1, Ch. 268, L. 1977; R.C.M. 1947, 75-5607.2; amd. Sec. 1, Ch. 405, L. 1983.

20-2-123 through 20-2-130 reserved.

20-2-131. Commissioner of higher education — duties — compensation — staff. (1) The board of regents shall prescribe the duties of the commissioner of higher education and shall set his compensation.

(2) The board of regents shall provide sufficient staff and office space to the commissioner for him to carry out his duties.

History: En. Sec. 3, Ch. 344, L. 1973; R.C.M. 1947, 75-5611(2), (3).

Cross-References

Regents to appoint Commissioner of Higher Education, Art. X, sec. 9, Mont. Const.

Parts 2 and 3 reserved

Part 4

Commission on Federal Higher Education Programs

Part Cross-References

Commission on Federal Higher Education Programs, 2-15-1515.

20-2-401. Definition. Unless the context requires otherwise, in this part "commission" means the commission on federal higher education programs provided for in 2-15-1515.

History: En. 75-9002 by Sec. 2, Ch. 220, L. 1974; R.C.M. 1947, 75-9302.

20-2-402. Purpose. It is the purpose of this part to promote the education and welfare of the people of this state by creating an agency which meets the requirements of federal law to cooperate with the federal government in the establishment and administration of programs for higher education provided for by the congress of the United States.

History: En. 75-9001 by Sec. 1, Ch. 220, L. 1974; R.C.M. 1947, 75-9301.

20-2-403. Duties. The commission shall:

(1) administer state plans under Title I of the federal Higher Education Facilities Act of 1963, P.L. 88-204, as amended by P.L. 89-329;

(2) administer state plans under Title VI of the federal Higher Education Act of 1965, P.L. 89-329;

(3) administer state plans under Title I of the federal Higher Education Act of 1965; and

(4) administer other state plans under federal funding and grant programs which may be assigned by the governor or the legislature except those pertaining to the duties of the superintendent of public instruction and the board of public education.

History: En. 75-9003 by Sec. 4, Ch. 220, L. 1974; R.C.M. 1947, 75-9303.

CHAPTER 3

ELECTED OFFICIALS

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20-3-336. Single-member trustee districts — legislative intent — minority defined.
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20-3-339 and 20-3-340 reserved.
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20-3-344. Nomination of candidates by petition in first-class elementary district.
20-3-345 through 20-3-350 reserved.
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Chapter Cross-References

General election provisions, Title 13, ch. 1.

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Control of campaign practices, Title 13, ch. 37.

School elections, Title 20, ch. 20.

Part 1
Superintendent of Public Instruction

Part Cross-References

Superintendent as part of executive branch, Art. VI, sec. 1, Mont. Const.

20-3-101. Election and qualifications. (1) A superintendent of public instruction for the state of Montana shall be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

(2) Any person shall be qualified to assume the office of superintendent of public instruction who:

(a) is 25 years of age or older at the time of his election;

(b) has resided within the state for the 2 years next preceding his election;

(c) holds at least a bachelor's degree from any unit of the Montana university system or from an institution recognized as equivalent by the board of public education for teacher certification purposes; and

(d) otherwise possesses the qualifications for such office which are required by The Constitution of the State of Montana.

History: En. 75-5702 by Sec. 11, Ch. 5, L. 1971; amd. Sec. 1, Ch. 17, L. 1973; R.C.M. 1947, 75-5702.

Cross-References

Election of Superintendent of Public Instruction, Art. VI, sec. 2, Mont. Const.

Qualifications of Superintendent of Public Instruction, Art. VI, sec. 3, Mont. Const.

Rules for determining residence, 1-1-215.

20-3-102. Term, oath, and vacancy. (1) The superintendent of public instruction shall hold office at the seat of government for the term of 4 years. He shall assume office on the first Monday of January following his election and shall hold the office until his successor has been elected and qualified.

Any person elected as the superintendent of public instruction shall take the oath of a civil officer.

(2) If the office of superintendent of public instruction becomes vacant, it shall be filled in the manner prescribed by The Constitution of the State of Montana.

History: En. 75-5703 by Sec. 12, Ch. 5, L. 1971; R.C.M. 1947, 75-5703.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 20-1-202.

Vacancy in office — how filled, Art. VI, sec. 6, Mont. Const.; 2-16-505.

Oath defined, 1-1-201.

Affirmation in lieu of oath, 1-6-104.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

20-3-103. Deputy superintendent — staff. (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the superintendent or in the case of vacancy in his office, shall perform all the duties of office until the disability is removed or the vacancy is filled. The deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

(2) The superintendent of public instruction has the power to employ, organize, and administer a staff of personnel to assist him in the administration of the duties and services of the office. In organizing his staff, the superintendent of public instruction may employ:

(a) a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;

(b) a professional staff for the state supervision and administration of K-12 vocational education; and

(c) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field related to special education for persons with disabilities and who has not less than 2 years' experience in special education.

History: (1)En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; Sec. 82-601, R.C.M. 1947; (2)En. 75-5704 by Sec. 13, Ch. 5, L. 1971; Sec. 75-5704, R.C.M. 1947; R.C.M. 1947, 75-5704, 82-601(part); amd. Sec. 10, Ch. 598, L. 1979; amd. Sec. 1, Ch. 436, L. 1987; amd. Sec. 8, Ch. 658, L. 1987; amd. Sec. 2, Ch. 249, L. 1991.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 20-1-202.

Oath defined, 1-1-201.

Affirmation in lieu of oath, 1-6-104.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

Vocational education, Title 20, ch. 7, part 3.

Special education, Title 20, ch. 7, part 4.

20-3-104. Discretionary staff. In addition to the positions of employment listed in 20-3-103, the superintendent of public instruction may employ:

(1) one or more assistant superintendents, one of whom may be designated as assistant superintendent for vocational education;

(2) a high school supervisor who is the holder of a class 3 teacher certificate with a district superintendent endorsement;

(3) an elementary supervisor who is the holder of a valid teacher certificate;

(4) a competent person to develop economy and efficiency in school transportation and to otherwise supervise the transportation program;

(5) a music supervisor who is a graduate of an accredited institution of higher education in music education and who has not less than 5 years of teaching experience;

(6) an educational media supervisor who is a graduate of an accredited institution of higher education and who has experience in the field of educational media; and

(7) any other supervisors or assistants as may be required to carry out the duties of his office.

History: En. 75-5705 by Sec. 14, Ch. 5, L. 1971; R.C.M. 1947, 75-5705; amd. Sec. 11, Ch. 598, L. 1979.

Cross-References

Vocational education, Title 20, ch. 7, part 3.

Transportation, Title 20, ch. 10.

20-3-105. Administrative powers and duties. In administering the affairs of his office, the superintendent of public instruction shall have the power and it shall be his duty to:

(1) keep a record of his official acts and all documents applicable to the administration of the office, preserve all official reports submitted to him for the period required by law, and surrender them to his successor at the expiration of his term;

(2) preserve all books, educational media, instructional equipment, and any other articles of educational interest and value which come into his possession and surrender them to his successor at the expiration of his term;

(3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this title;

(4) provide and keep an official seal of the superintendent of public instruction by which his official acts shall be authenticated;

(5) if he deems necessary, cause the printing of a complete and updated volume of the school laws of the state, which shall be offered and sold at cost of the printing and shipping to any school official or other person;

(6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislature at which new school laws or amendments to the school laws were adopted. It shall be offered and sold at cost of the printing and shipping to any school official or other person.

(7) if deemed necessary, publish a biennial report of the superintendent of public instruction;

(8) counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, give a county superintendent a written answer to any question concerning school law;

(9) call an annual meeting of the county superintendents when he deems it advisable;

(10) as far as he shall find it practicable, address public assemblies on subjects pertaining to education in Montana; and

(11) faithfully work in all practical and possible ways for the welfare of the public schools of the state.

History: En. 75-5706 by Sec. 15, Ch. 5, L. 1971; R.C.M. 1947, 75-5706; amd. Sec. 6, Ch. 125, L. 1983; amd. Sec. 1, Ch. 410, L. 1987.

Cross-References

Duties of Superintendent of Public Instruction, Art. VI, sec. 4, Mont. Const.

Seals, Title 1, ch. 4, part 2.

Public records, Title 2, ch. 6.

Distribution of missing children list, 44-2-503, 44-2-506.

20-3-106. Supervision of schools — powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(9) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

(10) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute BASE aid and special education allowable cost payments in support of the BASE funding program, in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(15) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(16) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(17) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(18) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(19) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(20) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(21) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(22) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(23) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(24) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(25) as the governing agent and executive officer of the state of Montana for K-12 vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(26) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(27) administer the traffic education program in accordance with the provisions of 20-7-502;

(28) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(29) review school building plans and specifications in accordance with the provisions of 20-6-622;

(30) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

(31) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

(32) administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

(33) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education.

History: En. 75-5707 by Sec. 16, Ch. 5, L. 1971; amd. Sec. 2, Ch. 137, L. 1973; (amd. Sec. 16, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 16, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 3, Ch. 266, L. 1977; amd. Sec. 1, Ch. 277, L. 1977; R.C.M. 1947, 75-5707; amd. Sec. 1, Ch. 384, L. 1979; amd. Sec. 351, Ch. 571, L. 1979;

amd. Sec. 12, Ch. 598, L. 1979; amd. Sec. 1, Ch. 299, L. 1985; amd. Sec. 2, Ch. 377, L. 1987; amd. Sec. 3, Ch. 635, L. 1987; amd. Sec. 9, Ch. 658, L. 1987; amd. Sec. 7, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 767, L. 1991; amd. Sec. 1, Ch. 325, L. 1993; amd. Sec. 4, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 325 deleted former (15) that read: "distribute state impact aid in accordance with the provisions of 20-9-304". Amendment effective July 1, 1993.

Chapter 633 in (10), before "state", inserted "direct"; in (14) substituted "BASE aid and special education allowable cost payments in support of the BASE funding program" for "state equalization aid in support of the foundation program and guaranteed tax base aid"; in (32), after "aid", deleted "for county retirement levy obligations"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

State Board of Land Commissioners — membership on, Art. X, sec. 4, Mont. Const.

20-3-107. Controversy appeal. (1) The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210; or

(b) a decision of a county transportation committee rendered under the provisions of 20-10-132.

(2) The superintendent of public instruction shall make his decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if he deems necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to the proper legal remedies in the state courts. Such proceedings shall be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, he shall appoint a hearing examiner as provided in 2-4-611 and the decision of the hearing examiner constitutes the superintendent's final order except as provided in this subsection. Such final order is subject to all the provisions of Title 2, chapter 4, relating to final agency decisions or orders, including judicial review under Title 2, chapter 4, part 7.

History: En. 75-5709 by Sec. 18, Ch. 5, L. 1971; amd. Sec. 1, Ch. 300, L. 1974; R.C.M. 1947, 75-5709; amd. Sec. 2, Ch. 467, L. 1979.

Cross-References

Oaths, Title 1, ch. 6.
Affidavits, Title 26, ch. 1, part 10.
Perjury, 45-7-201.
False swearing, 45-7-202.

20-3-108. Division of resources and assessment account. There is a resources and assessment account in the state special revenue fund. Funds derived from the sale of educational materials or services provided by the division of resources and assessment shall be deposited in the resources and assessment account. In addition to other available funds, the superintendent of public instruction shall use these funds for the operation and maintenance of the division of resources and assessment as authorized by 20-3-106.

History: En. Sec. 1, Ch. 436, L. 1979; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 66, Ch. 370, L. 1987; amd. Sec. 1, Ch. 470, L. 1987.

Cross-References

Special accounts, Title 17, ch. 2, part 2.

Part 2

County Superintendent of Schools

Part Cross-References

Service by Supreme Court Marshal, 3-2-502.

Service by Constable, 3-10-701, 3-10-706.

County officers generally, Title 7, ch. 4.

Duties of County Sheriff, 7-4-3001; Title 7, ch. 32, part 21.

Membership in associations of County School Superintendents — payment of expenses, 7-5-2146.

20-3-201. Election and qualifications — part-time office allowed. (1) A county superintendent must be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent must be elected at the general election preceding the expiration of the term of office of the incumbent.

(2) Upon verification by the county clerk and recorder, a person is qualified to file for and assume the office of county superintendent who:

(a) is a qualified elector;

(b) holds a valid, current class 1 professional certificate, class 2 standard certificate, or class 3 administrative and supervisory certificate issued by the superintendent of public instruction; and

(c) has at least 3 years of successful teaching experience.

(3) (a) When the office of county superintendent of schools is consolidated with another county office within the county, the officeholder must have the qualifications listed in subsection (2) or shall, with the approval of the governing body, contract for the full performance of the duties required of a county superintendent in 20-3-207 and 20-3-210 with:

(i) another county superintendent, with the approval of the governing body of that county;

(ii) a former county superintendent; or

(iii) a person who:

(A) is a qualified elector;

(B) holds a valid administrative certificate as provided in 20-4-106(1)(c);

(C) takes the oath of office in 20-1-202;

(D) is bonded in the manner provided for county officers in Title 2, chapter 9, part 7; and

(E) attends instructional training in the duties of a county superintendent as offered by the superintendent of public instruction.

(b) Whenever a governing body contracts with a person for performance of the duties required of a county superintendent under the provisions of subsection (3)(a)(iii), the contract must be for at least the duration of 1 school fiscal year.

(c) The superintendent of public instruction shall prescribe a contract form to be used.

(4) The board of county commissioners may establish the office of county superintendent as a part-time office under the provisions of 20-3-213, and adjust the salary established in 7-4-2503 to make it commensurate with the reduction in hours. A part-time county superintendent shall perform all duties of that office that are required by law.

History: En. 75-5802 by Sec. 20, Ch. 5, L. 1971; amd. Sec. 29, Ch. 100, L. 1973; R.C.M. 1947, 75-5802; amd. Sec. 1, Ch. 355, L. 1979; amd. Sec. 1, Ch. 550, L. 1985; amd. Sec. 1, Ch. 76, L. 1991; amd. Sec. 1, Ch. 146, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 146 in (2), at beginning, inserted "Upon verification by the county clerk and recorder" and after "qualified to" inserted "file for and"; in (2)(b), near beginning after "valid", substituted "current class 1 professional certificate, class 2 standard certificate, or class 3 administrative and supervisory" for "teacher"; and inserted (4) allowing establishment of the County Superintendent's office as a part-time office. Amendment effective March 24, 1993.

Effective Date — Applicability: Section 5, Ch. 146, L. 1993, provided: "[This act] is effective on passage and approval and applies to each county upon the beginning of the next term of office after [the effective date of this act]." Effective March 24, 1993.

Cross-References

General qualifications for county office, 7-4-2201.

Consolidation of county offices, Title 7, ch. 4, part 23.

Salary, 7-4-2503.

20-3-202. Term, oath, and vacancy. (1) The county superintendent shall hold office for a term of 4 years. He shall assume office on the first Monday of January following his election and shall hold the office until his successor has been elected and qualified.

(2) Any person elected as the county superintendent shall take the oath or affirmation of office and shall give an official bond, as required by law.

(3) If the office of county superintendent becomes vacant, the board of county commissioners shall appoint a replacement to fill the vacancy. Such replacement shall serve until the next regular general election, when a person shall be elected to serve the remainder of the initial term, if there be any remaining term.

History: En. 75-5803 by Sec. 21, Ch. 5, L. 1971; R.C.M. 1947, 75-5803.

Cross-References

Constitutional oath, Art. III, sec. 3, Mont. Const.

Oaths, Title 1, ch. 6; 2-16-211; 20-1-202.

Term of office of county officers, 7-4-2205.

Vacancies in county offices generally, 7-4-2206.

20-3-203. Office costs and staff. (1) The board of county commissioners shall supply the county superintendent with suitable office space and office supplies. The county superintendent shall be paid from the county general fund all necessary traveling expenses that he actually incurs in discharging his duties, after such expenses have been audited by the board of county commissioners.

(2) Upon the county superintendent's recommendation of a candidate, the board of county commissioners may appoint such candidate to the position of chief deputy county superintendent. The commissioners also may appoint deputies and assistants for the county superintendent. The commissioners shall fix the salaries of the personnel prescribed by this section at 90% or less of the salary of the county superintendent.

History: En. 75-5804 by Sec. 22, Ch. 5, L. 1971; R.C.M. 1947, 75-5804.

Cross-References

Deputy county officers in general, Title 7, ch. 4, part 24.

20-3-204. Office hours. (1) Except for a part-time county superintendent provided for under 20-3-201(4), the county superintendent of schools shall keep the office of the county superintendent open from 8 a.m. until 5 p.m. every day when the county superintendent is not engaged in the supervision of schools except on holidays and on Saturdays, provided that when the county superintendent has a deputy or clerk, the office must be kept open from 8 a.m. until 5 p.m. every day except holidays and except Saturdays. The office must be kept open at all times as business may require.

(2) This section does not apply to counties operating under the county manager plan.

History: En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4736, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957; R.C.M. 1947, 16-2414(part); amd. Sec. 2, Ch. 146, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 146 in (1), at beginning, inserted exception clause; and made minor changes in style. Amendment effective March 24, 1993.

Effective Date — Applicability: Section 5, Ch. 146, L. 1993, provided: "[This act] is effective on passage and approval and applies to each county upon the beginning of the next term of office after [the effective date of this act]." Effective March 24, 1993.

20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.

History: (1) thru (22)En. 75-5805 by Sec. 23, Ch. 5, L. 1971; amd. Sec. 4, Ch. 266, L. 1977; Sec. 75-5805, R.C.M. 1947; (23) thru (26)En. 75-5807 by Sec. 25, Ch. 5, L. 1971; Sec. 75-5807, R.C.M. 1947; R.C.M. 1947, 75-5805, 75-5807; amd. Sec. 1, Ch. 269, L. 1979; amd. Sec. 15, Ch. 392, L. 1979; amd. Sec. 2, Ch. 511, L. 1979; amd. Sec. 5, Ch. 317, L. 1981; amd. Sec. 1, Ch. 35, L. 1989; amd. Sec. 8, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 767, L. 1991; amd. Sec. 6, Ch. 563, L. 1993; amd. Sec. 48, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 563 in (4), after "tuition", substituted "and transportation obligation" for "application" and at end substituted "20-5-323 and 20-5-324" for "20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312"; and made minor changes in style.

Chapter 633 in (16), before "general fund", deleted "provisions of 20-9-348 and the other". Amendment effective July 1, 1993.

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-3-206. Additional positions. In his capacity as county superintendent, he also shall serve as:

(1) the chairman of the county transportation committee, as prescribed by 20-10-131;

(2) a member of the high school boundary commission of the county, as prescribed by 20-6-304;

(3) an attendance officer for a district under the conditions prescribed by 20-5-104; and

(4) the clerk of a joint board of trustees under the conditions prescribed by 20-3-361.

History: En. 75-5806 by Sec. 24, Ch. 5, L. 1971; amd. Sec. 2, Ch. 277, L. 1977; R.C.M. 1947, 75-5806.

Cross-References

Consolidation of county offices, Title 7, ch. 4, part 23.

20-3-207. Assist trustees with school supervision. The county superintendent shall assist the trustees of any district that does not employ a district superintendent or principal with the supervision of their schools by:

(1) visiting each school of the district at least once a school year while pupil instruction is being conducted to observe the instructional methods, ability of the teacher, progress and discipline of the pupils, and the general conditions of the school;

(2) special visits to the schools on request of the trustees;

(3) advising and directing teachers on instruction, pupil discipline, and other duties of the teacher;

(4) consulting with the trustees on all school matters that may be found during the observation of the school or may otherwise come to the attention of the county superintendent.

History: **En. 75-5808 by Sec. 26, Ch. 5, L. 1971; R.C.M. 1947, 75-5808.**

20-3-208. Authority to request, accept, and disburse money. (1) A county superintendent may, with the advice and consent of the appropriate school boards, request and accept money made available from federal, state, or private sources for purposes of public education.

(2) Subject to applicable federal and state guidelines and, in the case of money received from private sources, subject to any guidelines fixed by the donor, a county superintendent may, in his discretion, disburse money received under this section to one or more public elementary or high school districts according to their needs. The county superintendent shall supervise the utilization of such money with the approval of the appropriate school boards.

(3) The county superintendent may establish a fund, for which the county treasurer shall maintain a separate accounting, for the deposit of money received under this section.

History: **En. 75-5808.1 by Sec. 1, Ch. 238, L. 1977; R.C.M. 1947, 75-5808.1; amd. Sec. 1, Ch. 182, L. 1979.**

Cross-References

Power to accept gifts, 20-6-601.

Fiscal duties of trustees, 20-9-213.

20-3-209. Annual report. The county superintendent of each county shall submit an annual report to the superintendent of public instruction not later than September 1. Such report shall be completed on the forms supplied by the superintendent of public instruction, which shall require the reporting of:

(1) the final budget information for each district of the county, as prescribed by 20-9-134(1);

(2) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(5);

(3) the pupil information for each district provided the county superintendent under the provisions of 20-4-301(1)(d) or 20-4-402(7); and

(4) any other information that may be requested by the superintendent of public instruction which is within his authority prescribed by this title.

History: **En. 75-5809 by Sec. 27, Ch. 5, L. 1971; R.C.M. 1947, 75-5809; amd. Sec. 2, Ch. 35, L. 1989.**

Cross-References

Duty of teachers to report, 20-4-301.

County Superintendent's annual financial report, 20-9-211.

Duty of trustees to report to County Superintendent, 20-9-213(5).

20-3-210. Controversy appeals and hearings. (1) Except as provided under 20-3-211, the county superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county. Except as provided in subsection (2), exhaustion of administrative remedies under this chapter is required prior to filing an action in district court concerning a decision of the trustees. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title. The county superintendent shall hear and decide all controversies arising under:

(a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements;

(b) 20-4-206(4); or

(c) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court concerning a decision of the trustees of a district in the following instances:

(a) a state agency has been granted primary jurisdiction over the matter;

(b) the matter is governed by a specific statute; or

(c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.

(3) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. The county superintendent shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy that is made by the county superintendent must be based upon the facts established at the hearing.

(4) The decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction.

(5) Cost incurred by the office of the county superintendent must be paid from the general fund budget of the county in which the controversy is initiated.

History: En. 75-5811 by Sec. 29, Ch. 5, L. 1971; amd. Sec. 1, Ch. 306, L. 1974; R.C.M. 1947, 75-5811; amd. Sec. 3, Ch. 489, L. 1979; amd. Sec. 1, Ch. 252, L. 1991; amd. Sec. 1, Ch. 439, L. 1991; amd. Sec. 7, Ch. 563, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 563 substituted present (1)(a) regarding approval of out-of-district attendance agreements for former language that read: "20-5-304 or 20-5-311 relating to the approval of tuition applications"; and made minor changes in style.

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Cross-References

Oaths, Title 1, ch. 6.

Review by Superintendent of Public Instruction, 20-3-354.

Perjury, 45-7-201.

20-3-211. Disqualification of county superintendent. A county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when:

(1) he is a party to or has an interest in the controversy;

(2) he is related to either party in the controversy by consanguinity or affinity within the sixth degree, computed according to the rules of law;

(3) either party to the controversy makes and files with the county superintendent of schools an affidavit that he has reason to believe and does believe that he cannot have a fair and impartial hearing before the county superintendent by reason of the bias or prejudice of the county superintendent; or

(4) the controversy involves the education or possible identification of a child with disabilities.

History: En. Sec. 1, Ch. 489, L. 1979; amd. Sec. 1, Ch. 236, L. 1987; amd. Sec. 10, Ch. 249, L. 1991.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

20-3-212. The county superintendent to appoint another county superintendent. (1) When a county superintendent is disqualified pursuant to 20-3-211, that county superintendent must appoint another county superintendent to hear and decide the matter of controversy arising pursuant to 20-3-210.

(2) The county in which the controversy was initiated shall reimburse the county served by the county superintendent appointed pursuant to subsection (1) for actual costs of travel, room, and board as a result of the appointment. Such county superintendent is entitled to expenses as provided in 20-3-203(1).

History: En. Sec. 2, Ch. 489, L. 1979.

20-3-213. Part-time office — establishment — restrictions. (1) A board of county commissioners that intends to establish the office of county superintendent of schools as a part-time office shall:

(a) pass a resolution stating the intent of the board to consider the action;

(b) set a date for a hearing on the issue and provide proper notice of the hearing;

(c) conduct a hearing and accept testimony from any registered elector of the county who presents evidence for or against the establishment of the part-time office; and

(d) within 5 days of the hearing, issue an order regarding the establishment of the part-time office.

(2) A board may not issue an order establishing the office of county superintendent as a part-time office less than 7 days before the date on which declarations for nominations may first be filed for the office.

(3) A board may not establish the office of county superintendent as a part-time office during a term of office for which a county superintendent has been elected as a full-time officeholder.

History: En. Sec. 3, Ch. 146, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 5, Ch. 146, L. 1993, provided: "[This act] is effective on passage and approval and applies to each county upon the beginning of the next term of office after [the effective date of this act]." Effective March 24, 1993.

Part 3
School District Trustees

Part Cross-References
School district trustees, Art. X, sec. 8, Mont. Const.

20-3-301. Election and term of office. (1) Every trustee position prescribed by this title shall be subject to election, and the term of office for each position shall be 3 years unless it is otherwise specifically prescribed by this title.

(2) The trustees shall be composed of the number of trustee positions prescribed for a district by 20-3-341 and 20-3-351. When exercising the power and performing the duties of trustees, the members shall act collectively and only at a regular or a properly called special meeting.

(3) The number of trustee positions in a district shall vary in accordance with 20-3-341 and 20-3-351 according to the type of district.

History: (1)En. 75-5906 by Sec. 35, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1975; Sec. 75-5906, R.C.M. 1947; (2)En. 75-5901 by Sec. 30, Ch. 5, L. 1971; Sec. 75-5901, R.C.M. 1947; (3)En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; Sec. 75-5902, R.C.M. 1947; R.C.M. 1947, 75-5901(part), 75-5902(part), 75-5906.

Cross-References
Campaign finance provisions not to apply to election of school trustees, 13-37-206.
District classification, 20-6-201, 20-6-301.

20-3-302. Legislative intent to elect less than majority of trustees. (1) It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees may not regularly expire and be subject to election on the same regular school election day. In elementary districts, there may not be more than three trustee positions in first-class districts, two trustee positions in second-class districts or third-class districts having five trustee positions, or one trustee position in third-class districts having three trustee positions regularly subject to election at the same time. In high school districts there may not be more than two additional trustee positions in first- or second-class districts or more than one in third-class districts regularly subject to election at the same time. In high school districts operating a county high school, there may not be more than two trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.

(2) In the following circumstances relating to newly created trustee positions, the initial terms may be shortened to comply with the intent of subsection (1):

(a) the creation of a new elementary district under the provisions of 20-6-217;

(b) the consolidation of two or more elementary districts to form an elementary district under the provisions of 20-6-203 or the consolidation of two or more high school districts to form a high school district under the provisions of 20-6-315;

(c) the establishment of additional trustee positions of a high school district under the provisions of 20-3-353 or 20-3-354 or new trustee positions under the provisions of 20-3-352(3);

(d) the change of a district's classification under the provisions of 20-6-201 or 20-6-301;

(e) the establishment of additional elementary trustee positions under the provisions of 20-3-341(3); or

(f) the establishment of additional high school trustee positions under the provisions of 20-6-313.

(3) If the change of a district's classification under 20-6-201 or 20-6-301 decreases the number of trustee positions, the positions must be eliminated in a manner that complies with the intent of subsection (1).

(4) Although the legislature intends that the terms of a majority of trustees of any district may not regularly expire and be subject to election at the same time, it is recognized that filling a vacancy under 20-3-308 may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time.

History: En. 75-5907 by Sec. 36, Ch. 5, L. 1971; amd. Sec. 2, Ch. 103, L. 1975; amd. Sec. 2, Ch. 122, L. 1975; R.C.M. 1947, 75-5907; amd. Sec. 2, Ch. 528, L. 1991; amd. Sec. 1, Ch. 137, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 137 in (2) substituted introductory clause concerning newly created trustee positions for former language that read: "While it is the intention of the legislature that the terms of a majority of trustees of any district may not regularly expire and be subject to election at the same time, it is recognized that the following circumstances, relating to the terms of trustees appointed to newly created positions or to positions vacated by death, resignation, or operation of law, may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time"; in (2)(b), after "20-6-203", inserted "or the consolidation of two or more high school districts to form a high school district under the provisions of 20-6-315"; in (2)(d) substituted "or" for "and"; deleted former (2)(e) that read: "(e) the filling of a trustee position that has become vacant under the provisions of 20-3-308 or any other provision of law"; substituted (2)(f) concerning establishment of additional positions under 20-6-313 for former subsection that read: "(g) any other circumstance arising under the law wherein a trustee position is filled by appointment subject to election at the next regular school election"; inserted (3) requiring the elimination of positions to comply with subsection (1); inserted (4) clarifying legislative intent; and made minor changes in style.

Cross-References

District classification, 20-6-201, 20-6-301.

Appointment of trustees when new elementary district created, 20-6-217.

Appointment of trustees when new high school district created, 20-6-313.

20-3-303. Term of vacated trustee position after election. Whenever a trustee position is subject to election because a vacancy of such position has occurred since the last regular school election day, the term of the trustee position shall not change and the member elected to fill such position shall serve the remainder of the unexpired term.

History: En. 75-5911 by Sec. 40, Ch. 5, L. 1971; R.C.M. 1947, 75-5911.

20-3-304. Annual election. In each district an election of trustees shall be conducted annually on the regular school election day, the first Tuesday of April. Election of trustees shall comply with the election provisions of Title 13 and this title.

History: En. 75-5912 by Sec. 41, Ch. 5, L. 1971; amd. Sec. 2, Ch. 109, L. 1974; R.C.M. 1947, 75-5912; amd. Sec. 353, Ch. 571, L. 1979.

Cross-References

Election of trustees after organization of community college district, 20-15-221.

Regular school election day and special school elections, 20-20-105.

20-3-305. Candidate qualification and nomination. (1) Except as provided in 20-3-338, any person who is qualified to vote in a district under the provisions of 20-20-301 shall be eligible for the office of trustee.

(2) Except as provided in 20-3-338, any five electors qualified under the provisions of 20-20-301 of any district, except a first-class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than 40 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated.

History: En. 75-5913 by Sec. 42, Ch. 5, L. 1971; R.C.M. 1947, 75-5913; amd. Sec. 1, Ch. 372, L. 1987; amd. Sec. 4, Ch. 539, L. 1987.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-3-306. Conduct of election. (1) The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of 20-20-201, except as provided in 20-3-344. The trustees shall call and conduct the trustee election in the manner prescribed in this title for school elections and Title 13. Any elector qualified to vote under the provisions of 20-20-301 may vote at a trustee election.

(2) The trustee election ballots shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term:

☐ (List the names of the candidates for a 3-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 2-year term:

☐ (List the names of the candidates for a 2-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 1-year term:

☐ (List the names of the candidates for a 1-year term with a vacant square in front of each name.)

History: En. 75-5915 by Sec. 44, Ch. 5, L. 1971; amd. Sec. 2, Ch. 165, L. 1973; amd. Sec. 2, Ch. 259, L. 1973; R.C.M. 1947, 75-5915; amd. Sec. 352, Ch. 571, L. 1979.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-3-307. Qualification and oath. (1) Any person who receives a certificate of election as a trustee under the provisions of 20-20-416 shall not assume the trustee position until he has qualified. Such person shall qualify by completing and filing an oath of office with the county superintendent not more than 15 days after the receipt of the certificate of election. After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

(2) If the elected person does not qualify in accordance with this requirement, a person shall be appointed in the manner provided by 20-3-309 and shall serve until the next regular election.

History: En. 75-5916 by Sec. 45, Ch. 5, L. 1971; amd. Sec. 1, Ch. 91, L. 1973; R.C.M. 1947, 75-5916.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Oath of office, 20-1-202.

20-3-308. Vacancy of trustee position. (1) Any elected trustee position shall be vacant whenever the incumbent:

(a) dies;

(b) resigns;

(c) moves his residence from the applicable district or from the nominating district in the case of an additional trustee in a high school district;

(d) is no longer a registered elector of the district under the provisions of 20-20-301;

(e) is absent from the district for 60 consecutive days;

(f) fails to attend three consecutive meetings of the trustees without a good excuse;

(g) has been removed under the provisions of 20-3-310; or

(h) ceases to have the capacity to hold office under any other provision of law.

(2) A trustee position also shall be vacant when an elected candidate fails to qualify under the provisions of 20-3-307.

History: En. 75-5917 by Sec. 46, Ch. 5, L. 1971; R.C.M. 1947, 75-5917.

Cross-References

Rules for determining residence, 1-1-215.

Vacancy in community college trustee position, 20-15-223.

20-3-309. Filling vacated trustee position — appointee qualification and term of office. (1) Whenever a trustee position becomes vacant in any district, the remaining members of the trustees shall declare such position vacant and they shall appoint, in writing within 60 days, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of such appointment. If the trustees do not make the appointment within such 60-day period, the county superintendent shall appoint, in writing, a competent person as a successor and notify such person of his appointment.

(2) Any person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent within 15 days after receiving notice of his appointment. Failure to file the oath of office shall constitute a continuation of the trustee position vacancy which shall be filled under the provisions of this section.

(3) Any person assuming a trustee position under the provisions of this section shall serve until the next regular school election and his successor has qualified.

History: En. 75-5918 by Sec. 47, Ch. 5, L. 1971; amd. Sec. 3, Ch. 122, L. 1975; amd. Sec. 5, Ch. 266, L. 1977; R.C.M. 1947, 75-5918; amd. Sec. 2, Ch. 269, L. 1979.

Cross-References

Filling vacancy in community college trustee position, 20-15-223.

20-3-310. Trustee removal. Any trustee may be removed from his trustee position by a court of competent jurisdiction under the law providing for the removal of elected civil officials. When charges are preferred against a trustee and good cause is shown, the board of county commissioners may suspend such trustee from his trustee position until the charges can be heard in the court of competent jurisdiction.

History: En. 75-5919 by Sec. 48, Ch. 5, L. 1971; R.C.M. 1947, 75-5919.

Cross-References

Impeachment, Art. V, sec. 13, Mont. Const.; Title 5, ch. 5, part 4.

Notice of removal, 2-16-503.

Montana Recall Act, Title 2, ch. 16, part 6.

Removal for acceptance of emoluments, 20-7-608.

20-3-311. Trustee travel reimbursement and compensation of secretary for joint board. The members of the trustees of any district shall not receive compensation for their services as trustees, except that the secretary of the trustees of a high school district operating a county high school or the secretary of a joint board of trustees may be compensated for his services as the secretary. The members of the trustees who reside over 3 miles from the trustees' meeting place shall be reimbursed at the rate as provided in 2-18-503, for every mile necessarily traveled between their residence and the meeting place and return in attending the regular and special meetings of the trustees, and all trustees shall be similarly reimbursed for meetings called by the county superintendent. The travel reimbursement may be accumulated during the school fiscal year and paid at the end of the fiscal year, at the discretion of each trustee.

History: En. 75-5931 by Sec. 60, Ch. 5, L. 1971; amd. Sec. 1, Ch. 62, L. 1974; R.C.M. 1947, 75-5931.

Cross-References

Rules for determining residence, 1-1-215.

20-3-312. Trustees of district affected by boundary change. The trustees of any district to which the territory of another district is attached as a result of annexation, abandonment, joint district dissolution, territory transfer, or any other method of changing district boundaries, except by the consolidation of elementary districts or by the creation of a new elementary district, shall continue to be the trustees of such district with the same powers, duties, and responsibilities and subject to the same limitations provided by law, as if there had been no boundary change. In the case of elementary district consolidation or the creation of a new elementary district, the appointed trustees of the resulting elementary district shall assume their trustee positions under the authority of 20-6-203 or 20-6-216, whichever is applicable.

History: En. 75-6531 by Sec. 190, Ch. 5, L. 1971; R.C.M. 1947, 75-6531.

Cross-References

Elementary school districts, Title 20, ch. 6, part 2.

High school districts, Title 20, ch. 6, part 3.

School district reorganization, Title 20, ch. 6, part 4.

20-3-313 through 20-3-320 reserved.

20-3-321. Organization and officers. (1) The trustees of each district shall annually organize as a governing board of the district after the regular election day and after the issuance of the election certificates to the newly elected trustees, but not later than the third Saturday of April. In order to organize, the trustees of the district shall be given notice of the time and place where the organization meeting will be held, and at such meeting they shall choose one of their number as the chairman. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who shall be a member of the board.

(2) The chairman of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. He shall perform the duties prescribed by this title and any other duties that normally pertain to such officer.

History: En. 75-5927 by Sec. 56, Ch. 5, L. 1971; amd. Sec. 5, Ch. 122, L. 1975; R.C.M. 1947, 75-5927.

Cross-References

Regular school election day and special school elections, 20-20-105.

Certificate of election, 20-20-416.

20-3-322. Meetings and quorum. (1) The trustees of a district shall hold at least the following number of regular meetings:

(a) an organization meeting, as prescribed by 20-3-321;

(b) a preliminary budget meeting, as prescribed by 20-9-113; and

(c) in first-class elementary districts, not less than one regular meeting per month; or

(d) in any other district, regular meetings during the months of April, July, October, and January.

(2) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency, meetings must be conducted in school buildings or in a publicly owned building located within the district.

(3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written

notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency.

(4) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of subsection (3), "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district.

History: **En. 75-5930 by Sec. 59, Ch. 5, L. 1971; R.C.M. 1947, 75-5930; amd. Sec. 2, Ch. 154, L. 1991; amd. Sec. 1, Ch. 50, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 50 in (2), near end of second sentence, substituted "in a publicly owned building located within the district" for "on other property belonging to the district"; and made minor changes in style. Amendment effective February 18, 1993.

20-3-323. District policy and record of acts. (1) The trustees of each district shall prescribe and enforce policies for the government of the district. In order to provide a comprehensive system of governing the district, the trustees shall:

(a) adopt the policies required by this title; and

(b) adopt policies to implement or administer the requirements of the general law, this title, the policies of the board of public education, and the rules of the superintendent of public instruction.

(2) The trustees shall keep a full and permanent record of all adopted policies and all other acts of the trustees. Minutes of each regular and special board meeting shall include wording of motions, voting records of each trustee present, and all other pertinent information, including a detailed statement of all expenditures of money with the name of any person or business to whom payment is made and showing the service rendered or goods furnished. A written copy of the minutes shall be made available within 5 working days following the approval of the minutes by the board at a cost of no more than 15 cents a page to be paid by those who request such a copy. One free copy of the minutes shall be provided to the local press within 5 working days following the approval of the minutes by the board. The board shall approve the minutes of each special and regular meeting no later than 1 month following the meeting if it meets on a regular monthly basis. If a board does not regularly meet on a monthly basis, it shall approve the minutes of each special and regular meeting at the next regular or special meeting. The approval of the minutes of a prior meeting shall not occur more than 40 days after the meeting, except that no board shall be required to meet to approve the minutes of a meeting at which no substantive business was conducted.

History: **En. 75-5932 by Sec. 61, Ch. 5, L. 1971; amd. Sec. 1, Ch. 192, L. 1975; amd. Sec. 6, Ch. 266, L. 1977; R.C.M. 1947, 75-5932; amd. Sec. 1, Ch. 360, L. 1979.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110; and

(25) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.

History: (1), (3) thru (18), (23)En. Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; Sec. 75-5933, R.C.M. 1947; (2), (19) thru (22)En. Sec. 63, Ch. 5, L. 1971; Sec. 75-5934, R.C.M. 1947; R.C.M. 1947, 75-5933(1) thru (18), 75-5934; amd. Sec. 1, Ch. 682, L. 1979; amd. Sec. 72, Ch. 575, L. 1981; amd. Sec. 2, Ch. 135, L. 1987; amd. Sec. 1, Ch. 145, L. 1987; amd. Sec. 2, Ch. 498, L. 1989; amd. Sec. 9, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 767, L. 1991; amd. Sec. 1, Ch. 402, L. 1993; amd. Sec. 5, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 402 in (22), after "weather", inserted "on school days"; inserted (23) requiring an American flag provided by a civic group to be displayed in each classroom except a room in which the flag may get soiled; and made minor changes in style.

Chapter 633 in (10), after "ANB", substituted "BASE budget levy, over-BASE budget levy" for "foundation program, permissive"; in (13), near end, inserted "impact aid fund"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Montana Administrative Procedure Act not applicable, 2-4-102.

Cooperative agreements with Indian tribes, Title 18, ch. 11.

Pupils, Title 20, ch. 5.

School districts, Title 20, ch. 6.

Trustees of elementary and high school districts to have same powers and duties, 20-6-101.

School instruction and special programs, Title 20, ch. 7.
School finance, Title 20, ch. 9.
Duties of trustees relating to food services, 20-10-204.
School elections, Title 20, ch. 20.

20-3-325. Clerk of the district. As provided in 20-3-321, the trustees shall employ and appoint a clerk of the district. The clerk of the district shall attend all meetings of the trustees to keep an accurate and permanent record of all the proceedings of each meeting. If the clerk is not present at a meeting, the trustees shall have one of their members or a district employee act as clerk for the meeting and such person shall supply the clerk with a certified copy of the proceedings. The clerk of the district also shall be the custodian of all documents, records, and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

(1) keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this title; and

(2) prepare the annual trustees' report required under the provisions of 20-9-213.

History: En. 75-5935 by Sec. 64, Ch. 5, L. 1971; amd. Sec. 7, Ch. 266, L. 1977; R.C.M. 1947, 75-5935.

Cross-References

Execution of contracts of employment, 20-4-201, 20-4-401.
Signing of emergency budget, 20-9-165.
Countersigning of warrants, 20-9-221.
Execution of bonds, 20-9-433.
Notification of bond payments, 20-9-442.
Duty to prepare ballots, 20-20-401.

20-3-326 through 20-3-330 reserved.

20-3-331. Purchase of insurance — self-insurance plan. (1) The trustees of a district may purchase insurance coverage or establish a self-insurance plan for the district, trustees, and employees for liability as provided in 2-9-211 and for group health and life insurance as provided in 2-18-702. The trustees shall include the cost of coverage in the general fund budget of the district and as authorized for the district transportation program in 20-10-143(1)(d).

(2) Whenever the trustees of a district establish a self-insurance plan, the trustees shall establish an internal service fund to account for the activities of the self-insurance plan.

History: En. 75-5939 by Sec. 68, Ch. 5, L. 1971; R.C.M. 1947, 75-5939; amd. Sec. 3, Ch. 425, L. 1979; amd. Sec. 73, Ch. 575, L. 1981; amd. Sec. 1, Ch. 15, L. 1985; amd. Sec. 2, Ch. 299, L. 1985; amd. Sec. 10, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 568, L. 1991.

20-3-332. Personal immunity and liability of trustees. (1) When acting in their official capacity at a regular or special meeting of the board or a committee thereof, the trustees of each district are individually immune from exemplary and punitive damages.

(2) The trustees of each district shall be responsible for the proper administration and utilization of all moneys of the district in accordance with the provisions of law and this title. Failure or refusal to do so shall constitute grounds for removal from office. Those trustees consenting to illegal use of the moneys shall be jointly and individually liable to the district for any losses the district has realized. The county attorney shall prosecute any proceeding

arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action shall be liable for the costs if the action fails.

History: En. 75-5941 by Sec. 70, Ch. 5, L. 1971; amd. Sec. 2, Ch. 91, L. 1973; R.C.M. 1947, 75-5941; amd. Sec. 1, Ch. 479, L. 1983.

Cross-References

State or other governmental entity immune from exemplary or punitive damages, 2-9-105.

Delivering items to successor, 20-1-203.

Trustee removal, 20-3-310.

Acceptance of emoluments, 20-7-608.

Costs, Title 25, ch. 10.

Joint and several liability — right of contribution, 27-1-703.

Official misconduct, 45-7-401.

20-3-333. Repealed. Sec. 14, Ch. 309, L. 1981.

History: En. 75-6309 by Sec. 122, Ch. 5, L. 1971; R.C.M. 1947, 75-6309(part).

20-3-334 and 20-3-335 reserved.

20-3-336. Single-member trustee districts — legislative intent — minority defined. (1) It is the intent of the legislature to provide a board of trustees of a school district with the option to:

(a) review the voting and population patterns of minorities of the school district, as determined by the most recent federal decennial census, voting records, and other pertinent information; and

(b) create single-member trustee districts within the school district if the board determines that the present trustee selection process does not serve the best interests of the electors of the district or ensure that the access of minority populations to the political process is not diluted in contravention of federal law.

(2) "Minority", as used in 20-3-337 and this section, means a minority whose rights are protected under section 2 of the Voting Rights Act of 1965, (42 U.S.C. 1973), as amended.

History: En. Sec. 1, Ch. 539, L. 1987.

20-3-337. Plan for creating single-member trustee districts. (1) The board of trustees of a school district may establish a procedure for studying the appropriateness of creating single-member trustee districts within the school district.

(2) If the board considers a single-member district plan, the plan must establish single-member districts that:

(a) are as compact in area and as equal in population as possible; and

(b) provide equitable voting rights for the minorities residing within the school district by ensuring that the access of minorities to the political process is not diluted in contravention of the Voting Rights Act Amendments of 1982, Public Law 97-205.

(3) If the board determines that it is in the best interest of the electors of the school district, it shall:

(a) propose creation of a single-member trustee district plan;

(b) schedule and hold a public hearing on the proposed plan; and

(c) publish in a newspaper of general circulation in the district a notice of the public hearing, including a map of the proposed single-member trustee district plan, and the reasons why the board believes that the plan satisfies the criteria set forth in subsection (2).

(4) After the public hearing is held, the board shall forward a copy of the proposed single-member trustee district plan to the secretary of state and the superintendent of public instruction for review and comment. The copy of the proposed plan must be accompanied by:

(a) a map indicating the circulation of the newspaper in which the notice required in subsection (3) was published;

(b) the published notice of the public hearing;

(c) a map of the proposed single-member trustee district plan; and

(d) a summary of any public comments to the board regarding the proposed plan.

(5) After receiving comments from the secretary of state and the superintendent of public instruction, the board of trustees may amend, revise, approve, or disapprove the proposed plan. If the plan is adopted by the board, it shall:

(a) inform the county superintendent of schools of its adoption;

(b) publish notice of the adoption in a newspaper of general circulation within the district, including identification of the boundaries of each new single-member trustee district and the implementation date of the plan; and

(c) file with the county clerk and recorder a certificate designating the boundary lines and limits of each single-member trustee district.

(6) All successors to the board of trustees must be elected in accordance with the adopted single-member trustee district plan.

(7) No change in the boundaries of a trustee district may be made within 3 months preceding a regular school election day as provided in 20-3-304.

History: En. Sec. 2, Ch. 539, L. 1987.

20-3-338. Trustees elected by single-member district. (1) At each annual election provided for in 20-3-304, each trustee candidate in a single-member trustee district must be a qualified elector of the trustee district and have resided in the trustee district to be represented for at least 1 year prior to becoming a candidate for the trustee position.

(2) Nomination of trustee candidates under the provisions of 20-3-305 and 20-3-344 must be by electors of the trustee district.

(3) The election of each trustee must be submitted to the electors in the trustee district who are qualified to vote under the provisions of 20-20-301.

History: En. Sec. 3, Ch. 539, L. 1987.

20-3-339 and 20-3-340 reserved.

20-3-341. Number of trustee positions in elementary districts — transition. The number of trustee positions in each elementary district shall vary according to the district's classification, as established by 20-6-201:

(1) There must be seven trustee positions in a first-class elementary district.

(2) There must be five trustee positions in a second-class elementary district; however, upon a majority vote of the board of trustees, the number may be increased to seven trustee positions at the next trustee election, provided that notice of the action of the board of trustees is published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of the trustee election. The board of trustees may

reduce the number of trustee positions from seven to five upon receiving a petition for that purpose from at least 10 qualified electors of the district.

(3) There must be three trustee positions in a third-class elementary district; however, upon a majority vote of the board of trustees, the number may be increased to five trustee positions at the next trustee election, provided that notice of the action of the board of trustees is published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of the trustee election. The board of trustees may reduce the number of trustee positions from five to three upon receiving a petition for that purpose from at least 10 qualified electors of the district.

(4) (a) If the number of trustee positions in a second-class elementary district is decreased from seven to five in accordance with the provisions of subsection (2), one position is eliminated at the time of the first subsequent school election and one position is eliminated at the next school election.

(b) If the number of trustee positions in a third-class elementary district is decreased from five to three in accordance with the provisions of subsection (3), one position is eliminated at the time of the first subsequent school election when two trustee positions would have been filled and one position is eliminated at the next school election when two trustee positions would have been filled.

History: En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; R.C.M. 1947, 75-5902(1); amd. Sec. 1, Ch. 591, L. 1989; (4)En. Sec. 2, Ch. 591, L. 1989; amd. Sec. 1, Ch. 45, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 45 in (2), near beginning after "district", inserted remainder of subsection regarding increase and decrease in board membership; and inserted (4)(a) regarding timing of reductions in board membership if number of trustee positions is decreased.

20-3-342. Determination of terms after creation or consolidation of elementary districts. Whenever the trustees are elected at one regular school election under the circumstances described in subsections (2)(a) and (2)(b) of 20-3-302, the members who are elected shall draw by lot to determine their terms of office. Such terms of office by trustee position shall be:

(1) three for 3 years, two for 2 years, and two for 1 year in a first-class elementary district;

(2) two for 3 years, two for 2 years, and one for 1 year in second-class elementary districts and third-class elementary districts having five trustee positions; or

(3) one for 3 years, one for 2 years, and one for 1 year in a third-class elementary district having three trustee positions.

History: En. 75-5908 by Sec. 37, Ch. 5, L. 1971; amd. Sec. 3, Ch. 103, L. 1975; R.C.M. 1947, 75-5908.

20-3-343. Determination of terms after change of district classification. Whenever the change of an elementary district classification requires the addition of trustee positions to the trustees of such district under the circumstance described in 20-3-302(2)(d), the members who are elected shall draw by lot to determine their terms of office which shall be one for 3 years and one for 2 years.

History: En. 75-5910 by Sec. 39, Ch. 5, L. 1971; R.C.M. 1947, 75-5910.

Cross-References

Elementary district classification, 20-6-201.

20-3-344. Nomination of candidates by petition in first-class elementary district. Except as provided in 20-3-338, any 20 electors, qualified under the provisions of 20-20-301, of any first-class elementary district may nominate by petition as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than 40 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated. The election shall be conducted with the ballot as specified in 20-3-306.

History: En. 75-5914.1 by Sec. 1, Ch. 165, L. 1973; R.C.M. 1947, 75-5914.1; amd. Sec. 5, Ch. 539, L. 1987.

20-3-345 through 20-3-350 reserved.

20-3-351. Number of trustee positions in high school districts. (1) Except as provided in 20-3-352(3), the trustees of a high school district, except a high school district operating a county high school, must be composed of:

(a) the trustees of the elementary district in which the high school building is located or, if there is more than one elementary district in which high school buildings are located, the trustees of the elementary district designated by the high school boundary commission; and

(b) the additional trustee positions determined in accordance with 20-3-352(2).

(2) The trustees of a high school district operating a county high school must be composed of seven trustee positions.

History: En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; R.C.M. 1947, 75-5902(2), (3); amd. Sec. 3, Ch. 528, L. 1991.

Cross-References

Definition of elementary and high school districts, 20-6-101.

Elementary district classification, 20-6-201.

High school district classification, 20-6-301.

20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee. (1) As provided in 20-3-351(1)(b), a high school district, except a high school district operating a county high school, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without equitable representation on the high school district trustees under the provision of 20-3-351(1)(a), request the establishment of additional trustee positions under the provisions of subsection (2) or when the electors approve an alternative method of electing members of the board of trustees under the provisions of subsection (3).

(2) A request for additional trustee positions must be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee

positions for the affected high school district in accordance with the following procedure:

(a) The taxable valuation of the elementary district that has its trustees placed on the high school trustees must be divided by the number of positions on the trustees of the elementary district to determine the taxable valuation per trustee position.

(b) The taxable valuation used for the calculation in subsection (2)(a) must be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(c) The taxable valuation determined in subsection (2)(b) must be divided by the taxable valuation per trustee position calculated in subsection (2)(a). The resulting quotient must be rounded off to the nearest whole number, except that when the quotient is less than 0.5, at least one nonvoting trustee position must be established for the territory without representation on the high school district board of trustees under the provision of 20-3-351(1)(a).

(d) Except for a nonvoting trustee position, the number determined in subsection (2)(c) must be the number of additional trustee positions, except that the number of additional trustee positions may not exceed four in a first- or second-class high school district or two in a third-class high school district except when two-thirds or more of the high school enrollment of the high school district and two-thirds or more of the taxable valuation of the high school district are located outside of the elementary district that has its trustees placed on the high school district trustees. When this situation exists, three additional trustees must be elected from the elementary school districts in which the high school is not located and one additional trustee must be elected at large in the high school district.

(3) (a) If more than half of the electors of the high school district reside outside the territory of the elementary school district in which the high school district buildings are located, at least 10% of the electors of the high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent, requesting an election to consider a proposition on the question of establishing the following alternative method of electing the members of the high school district board of trustees:

(i) one trustee to be elected from each elementary school district with territory included in the high school district; and

(ii) two or three trustees to be elected at large in the high school district, whichever number results in an odd number of members on the board of trustees.

(b) (i) When the county superintendent receives a valid petition, the county superintendent shall order the trustees of the high school district to conduct an election on the next regular school election day on the proposition allowed under the provisions of subsection (3)(a).

(ii) If the electors of the district approve a proposition to establish the alternative method of electing the high school board of trustees, the county superintendent shall order that the members of the board of trustees be elected according to subsection (3)(a) at the next regular school election.

(c) Whenever the trustees are elected at one regular election under subsection (3)(b), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be divided as equally as practicable among 1-, 2-, and 3-year terms.

(d) A petition to call an election for the purposes of subsection (3) may not be submitted to the county superintendent more than one time in each 5-year period.

History: En. 75-5903 by Sec. 32, Ch. 5, L. 1971; amd. Sec. 1, Ch. 328, L. 1973; R.C.M. 1947, 75-5903; amd. Sec. 1, Ch. 528, L. 1991.

20-3-353. Establishment and purpose of trustee nominating districts. (1) After the county superintendent has determined the number of additional trustee positions, he shall establish trustee nominating districts in that portion of the high school district without representation on the high school trustees. There shall be one trustee nominating district for each additional trustee position, except the additional trustee-at-large. Unless it is impossible, the trustee nominating district boundaries shall be coterminous with elementary district boundaries.

(2) The purpose of the trustee nominating district shall be to establish a representative district for the nomination and election of a resident of such district to be an additional member of the trustees of a high school district. The electors qualified to vote in the high school district under the provisions of 20-20-301 and who reside in the trustee nominating district shall be the only electors who may vote for the additional trustee representing such district. They also shall be permitted to vote for a trustee position at large, if there is one, but for no other high school trustee position.

(3) Any additional trustee position established under the provisions of this section shall be filled in a manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section shall be subject to election at the next regular school election.

History: En. 75-5904 by Sec. 33, Ch. 5, L. 1971; R.C.M. 1947, 75-5904.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-3-354. Redetermination of additional trustee positions and subsequent adjustments. Whenever there is a revision of the taxable valuation of the high school district or the elementary districts within it or there is a reclassification of the elementary district which has its trustees placed on the high school district board of trustees, the county superintendent shall redetermine the number of additional trustee positions for the high school district in accordance with 20-3-352. If there is a change in the allowable number of additional trustee positions, the county superintendent shall reestablish the trustee nominating districts in accordance with 20-3-353. If the number of additional trustee positions is less than the previous number of positions, the county superintendent shall designate which present additional positions are to terminate upon his order reestablishing the trustee nominating districts. If the number of additional trustee positions is more than the previous number of positions, such additional trustee positions shall be filled in the manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section shall be subject to election at the next regular school election.

History: En. 75-5905 by Sec. 34, Ch. 5, L. 1971; R.C.M. 1947, 75-5905; amd. Sec. 2, Ch. 384, L. 1979.

20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions. (1) Whenever all of the additional trustee positions are subject to election at one regular school election under the circumstance described in 20-3-302(2)(c), the members who are elected shall draw by lot to determine their terms of office. Such terms of office by number of members elected shall be:

(a) two for 3 years, if four are elected;

(b) one for 3 years, if one, two, or three are elected;

(c) one for 2 years, if two, three, or four are elected; and

(d) one for 1 year, if three or four are elected.

(2) Whenever the reestablishment of the additional trustee positions for a high school district under the provisions of 20-3-354 results in an increased number of additional trustee positions, the members who are elected at the next regular school election shall draw by lot to determine their terms of office and such terms shall be determined in accordance with the additional trustee terms prescribed in this section.

History: En. 75-5909 by Sec. 38, Ch. 5, L. 1971; R.C.M. 1947, 75-5909.

20-3-356. Membership of elected trustees of high school district operating county high school and nomination of candidates. (1) The trustees of a high school district operating a county high school shall be composed of the following:

(a) four trustee positions filled by members residing in the elementary district where the county high school building is located; and

(b) three trustee positions filled by members one of whom resides in each of the three trustee nominating districts in the territory of the high school district outside of the elementary district where the county high school building is located. The county superintendent shall establish the nominating districts, and, unless it is impossible, such districts shall have coterminous boundaries with elementary district boundaries.

(2) The provisions of 20-3-305 shall govern the nomination of candidates for the trustee election prescribed in this section.

History: En. 75-5924 by Sec. 53, Ch. 5, L. 1971; amd. Sec. 4, Ch. 122, L. 1975; R.C.M. 1947, 75-5924.

Cross-References

Rules for determining residence, 1-1-215.

Transactions after approved county high school unification, 20-6-313.

20-3-357 through 20-3-360 reserved.

20-3-361. Joint board of trustees organization and voting membership. (1) The board of trustees of two or more school districts may form a joint board of trustees for the purpose of coordinating any educational program or support service of the districts. A joint board of trustees may coordinate only those programs and services agreed to by the participating boards of trustees.

(2) When a joint board of trustees is formed, all of the members of the districts' trustees shall be members of the joint board of trustees and each member shall have the right to participate in the meetings, but voting on matters considered by the joint board shall be limited by the provisions of this section.

(3) At the first meeting of the joint board of trustees, there shall be a chairman of the joint board of trustees selected from among the membership. A secretary of the joint board shall be selected from the membership. The chairman, when selected as a voting member, shall not be disqualified from voting because of his position of chairman of the board. The secretary shall not be a voting member except that he shall cast the deciding vote when three successive ballots have resulted in a tie vote of the joint board of trustees.

(4) The voting membership of the joint board of trustees shall be equalized among the trustee membership of the participating districts. After the selection of the chairman and the secretary, if necessary, the voting membership shall be:

(a) all of the membership of the board of trustees of the smallest class of district, according to 20-6-201 or 20-6-301, unless one of its members is selected as secretary, in which case such member shall not be a voting member; and

(b) the members of the board of trustees of the other district or districts who are selected by such trustees as voting members of the joint board in a number equal to the number of voting members of the district as established under subsection (4)(a) above. The names of the voting membership selected by the trustees shall be submitted in writing to the secretary of the board and shall be the only members of such district's trustees eligible to vote on joint board matters unless such list is revised in writing by the trustees.

(5) Each voting member shall be entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote.

(6) A joint board must remain in existence for at least 1 school year and may not be dissolved until the end of a school year.

History: En. 75-5928 by Sec. 57, Ch. 5, L. 1971; amd. Sec. 6, Ch. 122, L. 1975; R.C.M. 1947, 75-5928; amd. Sec. 1, Ch. 308, L. 1987.

Cross-References

Authority of joint board to operate junior high school, 20-6-505.

Funding for special education cooperatives or joint boards, 20-7-457.

20-3-362. Powers of joint board of trustees. (1) When a joint board of trustees is formed as provided by 20-3-361, it shall have the power to:

(a) jointly employ a district superintendent under the provisions of 20-4-401;

(b) jointly employ teachers and specialists under the provisions of 20-4-201;

(c) open a junior high school under the provisions of 20-6-505 if the trustees of a county high school and the trustees of an elementary district have formed a joint board of trustees;

(d) prescribe and administer joint administrative policy;

(e) jointly provide any program or service authorized under 20-3-324, including any joint provision of special education services as provided in 20-7-457; and

(f) prorate all items of joint expense among the school districts, provided that a controversy over any decision by the joint board to prorate joint costs may, within 30 days, be appealed by the trustees of any district to the superintendent of public instruction for a final decision as to what constitutes a fair and just proration of the cost.

(2) The joint board of trustees shall not have the power to transact business that is not specifically related to the joint administration of the districts.

History: En. 75-5929 by Sec. 58, Ch. 5, L. 1971; R.C.M. 1947, 75-5929; amd. Sec. 3, Ch. 511, L. 1979; amd. Sec. 2, Ch. 308, L. 1987; amd. Sec. 1, Ch. 343, L. 1989.

CHAPTER 4

TEACHERS, SUPERINTENDENTS, AND PRINCIPALS

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Chapter Cross-References

Teachers' retirement system, Title 19, ch. 20.

Part 1

Certification of Teaching and Supervisory Personnel

20-4-101. System and definitions of teacher and specialist certification — student teacher exception. (1) In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher and specialist certification shall be established and maintained under the provisions of this title and no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate or specialist certificate or the district has obtained an emergency authorization of employment from the state.

(2) As used in this part, "teacher or specialist certificate" means a certificate issued or applied for under 20-4-106. The term "teacher or specialist" refers to a person certified under 20-4-106.

(3) The above certification requirement shall not apply to a student teacher who is hereby defined as a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by such institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

(4) A student teacher, while serving such nonsalaried internship under the supervision of a certificated teacher, shall be accorded the same protection of the laws as that accorded a certificated teacher and shall, while acting as such student teacher, comply with all rules of the governing board of the district or public institution and the applicable provisions of 20-4-301 relating to the duties of teachers.

History: En. 75-6001 by Sec. 71, Ch. 5, L. 1971; amd. Sec. 1, Ch. 396, L. 1973; R.C.M. 1947, 75-6001; amd. Sec. 4, Ch. 511, L. 1979; amd. Sec. 2, Ch. 227, L. 1987.

Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

Health education course, including drug and alcohol abuse instruction, Title 20, ch. 25, part 6.

20-4-102. Board of public education policies. To effect an orderly and uniform system of teacher and specialist certification, the board of public education shall, upon the recommendation of the superintendent of public instruction and in accordance with the provisions of this title, prescribe and adopt policies for the issuance of teacher or specialist certificates. Such policies shall provide for:

(1) reasonable training and experience requirements for teacher, specialist, supervisor, and administrative certificates and endorsements thereon as provided by the certification classification in 20-4-106;

(2) the renewal of teacher or specialist certificates based on the same conditions prescribed for the initial issuance of certificates;

(3) the conduct of hearings on teacher or specialist certification revocation, suspension, or denial;

(4) the issuance of emergency authorization to a district to employ a person who is not the holder of a valid teacher certificate as an instructor of pupils; and

(5) any other policy, not inconsistent with the law, which is necessary for the proper operation of a system of teacher and specialist certification.

History: En. 75-6002 by Sec. 72, Ch. 5, L. 1971; R.C.M. 1947, 75-6002; amd. Sec. 5, Ch. 511, L. 1979.

Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

20-4-103. Issuance of teacher or specialist certificates. The superintendent of public instruction shall issue all teacher and specialist certificates in the state of Montana. In issuing teacher or specialist certificates, the superintendent of public instruction shall comply with the provisions of this title and the teacher and specialist certification policies adopted by the board of public education. The superintendent of public instruction shall not issue a teacher or specialist certificate to any person who does not satisfy the qualifications or other requirements of this title and of the board of public education policies for teacher or specialist certification.

History: En. 75-6003 by Sec. 73, Ch. 5, L. 1971; R.C.M. 1947, 75-6003; amd. Sec. 6, Ch. 511, L. 1979.

Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

Duty to certify special education teachers, 20-7-403.

20-4-104. Qualifications. (1) A person may be certified as a teacher when he satisfies the following qualifications:

(a) He is 18 years of age or older.

(b) He is of good moral and professional character.

(c) He has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution of equal rank and standing as that of any unit of the Montana university system, and his training is evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d).

(d) He has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America and The Constitution of the State of Montana."

(2) Any person may be certified as a specialist when he satisfies the requirements of subsections (1)(a) and (1)(b) and the requirement for a specialist certificate provided in 20-4-106(2).

History: En. 75-6004 by Sec. 74, Ch. 5, L. 1971; R.C.M. 1947, 75-6004; amd. Sec. 7, Ch. 511, L. 1979; amd. Sec. 1, Ch. 165, L. 1981; amd. Sec. 1, Ch. 266, L. 1983; amd. Sec. 1, Ch. 257, L. 1991.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Oaths, Title 1, ch. 6, part 1.

20-4-105. Repealed. Sec. 2, Ch. 165, L. 1981.

History: En. 75-6005 by Sec. 75, Ch. 5, L. 1971; R.C.M. 1947, 75-6005; amd. Sec. 8, Ch. 511, L. 1979.

20-4-106. Classifications of teacher and specialist certificates. (1) The superintendent of public instruction shall issue teacher certificates and the board of public education shall adopt teacher certification policies on the basis of the following classifications of teacher certificates:

(a) The class 1 professional certificate may be issued to an otherwise qualified applicant who has completed a teacher education program which includes a bachelor's degree and a minimum of 1 year of study beyond such degree in a unit of the Montana university system or an equivalent institution. The professional certificate may be endorsed for elementary instruction, secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(b) The class 2 standard certificate may be issued to an otherwise qualified applicant who has completed a 4-year teacher education program and who has been awarded a bachelor's degree by a unit of the Montana university system or an equivalent institution. The standard certificate may be endorsed for elementary instruction, secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(c) The class 3 administrative and supervisory certificate may be issued to an otherwise qualified applicant who is eligible for a teacher certificate endorsed for teaching in the school or schools in which he would be an administrator or he would supervise. The applicant also shall possess the training and experience required by the policies of the board of public education for an endorsement as superintendent, principal, or supervisor.

(d) The class 4 vocational, recreational, or adult education certificate may be issued to an otherwise qualified applicant who has the qualifications of training and experience required by the United States office of education or the qualifications required by the special needs of the several vocational, recreational, or adult education fields and who can qualify under the policy of the board of public education for the issuance of this classification of teacher certification.

(e) The class 5 provisional certificate may be issued to an otherwise qualified applicant who can provide satisfactory evidence of his intent to qualify in the future for a class 1 or a class 2 certificate and who has completed a 4-year college program or its equivalent and holds a bachelor's degree from a unit of the Montana university system or its equivalent. The provisional certificate may be endorsed for elementary instruction, secondary instruction, or both, and for special subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher or specialist certification endorsement.

(2) The superintendent of public instruction shall issue specialist certificates, and the board of public education shall adopt specialist certification policies. The specialist certificate may be issued to an otherwise qualified applicant who has the training, experience, and license required under the standards of the board of public education for the certification of a profession other than the teaching profession.

(3) For purposes of evaluating the qualifications of applicants for either teacher or specialist certificates, a year means the instructional period consisting of three quarters or two semesters or other terms which are recognized as an academic year by any unit of the Montana university system or equivalent institution.

History: En. 75-6006 by Sec. 76, Ch. 5, L. 1971; R.C.M. 1947, 75-6006; amd. Sec. 9, Ch. 511, L. 1979; amd. Sec. 1, Ch. 175, L. 1983.

Cross-References

Duty of Board of Public Education to adopt certification policies, 20-2-121.

Duty of Superintendent of Public Instruction to certify special education teachers, 20-7-403.

20-4-107. Outstanding teacher certificates. (1) No provisions of this title shall affect or impair the validity of any certificate that is in force on January 26, 1971, or the rights and privileges of the holders by virtue thereof, except that any certificates may be suspended or revoked for any of the causes and by the procedures provided by law.

(2) Any holder of an elementary school standard certificate issued prior to July 1, 1959, under the previous statute and in force on July 1, 1959, shall be eligible for renewal of such certificate in accordance with the policies of the board of public education until the holder qualifies for the class 2 standard certificate as provided in 20-4-106.

(3) Any holder of a class 5 certificate in force on June 30, 1966, or issued between July 1, 1966, and December 31, 1966, shall be eligible for renewal of such certificate in accordance with the policies of the board of public education until the holder qualifies for the class 2 standard certificate as provided in 20-4-106.

History: En. 75-6007 by Sec. 77, Ch. 5, L. 1971; R.C.M. 1947, 75-6007.

20-4-108. Term of teacher and specialist certificates — renewal. (1) Any teacher or specialist certificate issued by the superintendent of public instruction shall bear the dates of issue and validity and shall be valid for a term of 5 school fiscal years, except that class 5 provisional certificates shall be valid for the number of years, up to a maximum of 5 years, provided by the policies of the board of public education. The period of validity for any certificate shall begin on July 1 immediately preceding the date of issue, except that a teacher or specialist who applies for certification after March 1 may, upon request, have the period of validity of the certificate begin on July 1 following the date of application.

(2) Teacher and specialist certificates shall be renewed for similar periods of time on the basis of the board of public education policies for teacher and specialist certification renewal.

History: **En. 75-6008 by Sec. 78, Ch. 5, L. 1971; amd. Sec. 1, Ch. 171, L. 1977; R.C.M. 1947, 75-6008; amd. Sec. 10, Ch. 511, L. 1979; amd. Sec. 1, Ch. 224, L. 1983.**

20-4-109. Fees for teacher and specialist certificates. (1) A person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee not to exceed $6 for each school fiscal year that the certificate is valid. In addition to this fee, a person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of $6. The fees must be paid to the superintendent of public instruction who shall deposit the fees with the state treasurer to the credit of the state special revenue fund account, created in subsection (2), to be used in the following manner:

(a) $3 for expenses of the certification standards and practices advisory council created in 2-15-1522;

(b) $3 to the board of public education to be used by the certification standards and practices advisory council for research in accordance with the duties of the council provided for in 20-4-133.

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account. The money in the account to be used for the purposes of subsection (1)(b) is statutorily appropriated, as provided in 17-7-502, to the board of public education for use by the certification standards and practices advisory council.

History: **En. 75-6009 by Sec. 79, Ch. 5, L. 1971; R.C.M. 1947, 75-6009; amd. Sec. 11, Ch. 511, L. 1979; amd. Sec. 5, Ch. 465, L. 1987; amd. Sec. 1, Ch. 103, L. 1989; amd. Sec. 4, Ch. 628, L. 1989; amd. Sec. 2, Ch. 495, L. 1991.**

20-4-110. Suspension, revocation, and denial of certificate. (1) The board of public education may suspend or revoke the teacher, administrator, or specialist certificate of any person for the following reasons:

(a) making any statement of material fact in applying for a certificate that the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher, administrator, or specialist certificate to the person if it had been known at the time the certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction of, entry of a guilty verdict, a plea of guilty, or a plea of no contest to a criminal offense involving moral turpitude in this state or any other state or country;

(f) immoral conduct related to the teaching profession;

(g) substantial and material nonperformance of the employment contract between the teacher, administrator, or specialist and the trustees of a school or school district without good cause or the written consent of the trustees; or

(h) denial, revocation, suspension, or surrender of a teacher, administrator, or specialist certificate in another state for any reason constituting grounds for similar action in this state.

(2) The board may initiate proceedings under this section if a request for the suspension or revocation of the teacher, administrator, or specialist certificate of any person is made to it by:

(a) the trustees of a district as to a teacher, administrator, or specialist employed by that school or school district within the 12 months immediately preceding receipt of the request by the board of public education; or

(b) the superintendent of public instruction.

(3) (a) If the employment relationship between a school district and a teacher, administrator, or specialist is terminated or not renewed or if a teacher, administrator, or specialist resigns to prevent termination or nonrenewal because the trustees have reason to believe that the teacher, administrator, or specialist engaged in conduct described in subsection (1)(e) or (1)(f), the trustees shall make a written report to the superintendent of public instruction describing the circumstances of the termination, nonrenewal, or resignation.

(b) The superintendent shall review the report and any supporting evidence included in the report and may conduct further investigation. If the superintendent is satisfied that sufficient grounds exist, the superintendent may request action by the board of public education under subsection (1). The request must be brought within 1 year after discovery of the events that gave rise to the report.

(c) The trustees and the superintendent shall ensure the confidentiality of the report.

(d) The trustees and the superintendent and their agents and employees are immune from suit for actions taken in good faith under this section with respect to the report.

(4) The board shall give a 30-day written notification to any person when the board intends to consider the suspension or revocation of a certificate. The board shall conduct an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board policies. At the hearing, the board shall afford the person an opportunity for defense against the charge.

(5) After a hearing, the board may suspend or revoke the person's teacher or specialist certificate, except that in the case of a first violation under subsection (1)(g), the maximum penalty is a 2-year suspension of the person's certificate.

(6) Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher or specialist certificate, the applicant may appeal the denial to the board of public education. The board shall hear the appeal in the same manner provided in this section for suspension or revocation and in accordance with the policies of the board. The decision of the board is final.

History: En. 75-6010 by Sec. 80, Ch. 5, L. 1971; R.C.M. 1947, 75-6010; amd. Sec. 1, Ch. 240, L. 1979; amd. Sec. 12, Ch. 511, L. 1979; amd. Sec. 1, Ch. 227, L. 1987; amd. Sec. 1, Ch. 382, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 382 throughout section, after "teacher", inserted "administrator"; in (1)(g) and near middle of (2)(a) substituted "school or school district" for "district"; near beginning of (3)(a), after "renewed", inserted "or if a teacher, administrator, or specialist resigns to prevent termination or nonrenewal" and at end substituted "or resignation" for "of the employment relationship"; in first sentence of (3)(b), after "report", inserted "and any supporting evidence included in the report" and at end of second sentence substituted "subsection (1)" for "subsection (2)(b)"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

20-4-111. Emergency authorization of employment. (1) A district may request from the superintendent of public instruction an emergency authorization of employment for a person who is not the holder of a valid teacher or specialist certificate as an instructor of pupils when the district cannot secure the services of a person holding a valid certificate. The person must have previously held a valid teacher or specialist certificate or shall meet the standards of preparation prescribed by the policies of the board of public education for and during an emergency. Emergency authorization of employment must indicate:

(a) the district to which the authorization is issued;

(b) the person whom the district is authorized to employ;

(c) the endorsement for elementary or secondary instruction and the specific subject fields for which authorization to employ the person is given; and

(d) the school fiscal year for which the emergency authorization of employment is given.

(2) Emergency authorization of employment of a person is valid for the school fiscal year identified on the authorization and may be renewed in accordance with the board of public education policies. A fee not to exceed $6 and, if no teacher or specialist certificate or emergency authorization of employment has ever been issued for the person, a filing fee of $6 must be paid for the issuance of an emergency authorization of employment. The superintendent of public instruction shall deposit the fees with the state treasurer to the credit of the general fund.

(3) Emergency authorization of employment of a person may be revoked for good cause in accordance with the provisions of 20-4-110.

History: En. 75-6011 by Sec. 81, Ch. 5, L. 1971; R.C.M. 1947, 75-6011; amd. Sec. 13, Ch. 511, L. 1979; amd. Sec. 26, Ch. 83, L. 1989; amd. Sec. 2, Ch. 103, L. 1989; amd. Sec. 3, Ch. 495, L. 1991.

20-4-112. Access to materials — superintendent of public instruction. The superintendent of public instruction has access to all material considered by or available to the school or school district that may be relevant to an allegation that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f) or that may lead to the discovery of relevant evidence.

History: En. Sec. 2, Ch. 382, L. 1993.

Compiler's Comments

Effective Date: Section 6, Ch. 382, L. 1993, provided: "[This act] is effective July 1, 1993."

20-4-113. Access to criminal justice information. (1) Either the trustees of a school district or the superintendent of public instruction may apply to a district court pursuant to 44-5-302 to review confidential criminal justice information that is relevant to the investigation of grounds for suspension or revocation of a teacher, administrator, or specialist certificate under 20-4-110.

(2) The district court shall provide the trustees or the superintendent of public instruction access to any confidential criminal justice information that is relevant to an investigation into possible grounds for suspension or revocation of a teacher, administrator, or specialist certificate. The court shall issue a protective order to protect the confidentiality of the information released.

History: En. Sec. 3, Ch. 382, L. 1993.

Compiler's Comments

Effective Date: Section 6, Ch. 382, L. 1993, provided: "[This act] is effective July 1, 1993."

20-4-114. Penalty for failure to report. The failure of a school trustee to report as required in 20-4-110 constitutes official misconduct within the meaning of 2-16-603.

History: En. Sec. 4, Ch. 382, L. 1993.

Compiler's Comments

Effective Date: Section 6, Ch. 382, L. 1993, provided: "[This act] is effective July 1, 1993."

20-4-115 through 20-4-120 reserved.

20-4-121. Interstate agreement on qualification of educational personnel. The interstate agreement on qualification of educational personnel is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose — Findings — Policy

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators are lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of

origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

Article II. Definitions

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise, the following definitions apply:

(1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

(3) "Accept" or any variant thereof means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) "State" means a state, territory, or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

(5) "Originating state" means a state (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) "Receiving state" means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III. Interstate Educational Personnel Contracts

(1) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it and the subdivisions of those states with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which he finds that there are programs of education, certification standards, or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable even though not identical to that prevailing in his own state.

(2) Any such contract shall provide for:

(a) its duration;

(b) the criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state;

(c) such waivers, substitutions, and conditional acceptance as shall aid the practical effectuation of the contract without sacrifice of basic educational standards; and

(d) any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than 5 years, but any such contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the

earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report not less than once a year to the heads of the appropriate education agencies of the contracting states.

Article IV. Approved and Accepted Programs

(1) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V. Interstate Cooperation

The party states agree that:

(1) they will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement; and

(2) they will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI. Agreement Evaluation

The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement and to formulate recommendations for changes.

Article VII. Other Arrangements

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

Article VIII. Effect — Withdrawal

(1) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX. Construction — Severability

This agreement shall be liberally construed so as to effectuate the purpose thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement is held to be contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

History: En. 75-6012 by Sec. 1, Ch. 328, L. 1977; R.C.M. 1947, 75-6012.

20-4-122. Designated official for purposes of interstate agreement. The designated state official for this state is the state superintendent of public instruction. The state superintendent of public instruction shall enter into contracts pursuant to Article III of the agreement only after approval of the specific text thereof by the board of public education.

History: En. 75-6013 by Sec. 2, Ch. 328, L. 1977; R.C.M. 1947, 75-6013.

20-4-123. Preservation and publication of contracts made pursuant to interstate agreement. True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the office of the state superintendent of public instruction. The state superintendent of public instruction shall publish all such contracts in convenient form.

History: En. 75-6014 by Sec. 3, Ch. 328, L. 1977; R.C.M. 1947, 75-6014.

20-4-124 through 20-4-130 reserved.

20-4-131. Definitions. As used in 2-15-1522 and 20-4-131 through 20-4-133, the following definitions apply:

(1) “Approved teacher education program” means a program that is offered by an accredited teacher education institution and approved by the board of public education.

(2) “Council” means the certification standards and practices advisory council created in 2-15-1522.

(3) “K-12 specialist” means a person employed by a school district as a librarian, school counselor, or special education or chapter I teacher or a

person who has a K-12 endorsement and who is assigned to teach in a classroom that is not self-contained.

(4) "Specialist" means a person employed by a school district as a school psychologist.

History: En. Sec. 1, Ch. 465, L. 1987; amd. Sec. 2, Ch. 124, L. 1991.

20-4-132. Meetings — assistance. (1) The council shall meet quarterly and at other times as may be required for the proper conduct of the business of the council at the call of the chairman.

(2) The council may adopt rules for the conduct of its business.

(3) The council shall keep a record of its proceedings.

(4) The council may request research, administrative, and clerical staff assistance from the board of public education.

(5) The council shall select a chairman and a vice-chairman from its appointed members.

(6) A quorum for a meeting is not less than four council members.

(7) Council members are entitled to travel expenses incurred for each day of attendance at council meetings or in the performance of any duty or service as a council member in accordance with 2-18-501 through 2-18-503.

History: En. Sec. 3, Ch. 465, L. 1987.

20-4-133. Duties of the council. (1) The council shall study and make recommendations to the board of public education in the following areas:

(a) teacher certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(b) administrator certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(c) specialist certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(d) feasibility of establishing standards of professional practices and ethical conduct;

(e) the status and efficacy of approved teacher education programs in Montana; and

(f) policies related to the denial, suspension, and revocation of teacher, administrator, and specialist certification and the appeals process. For the purpose of preparing recommendations in this area, the council is authorized to review the individual cases and files that have been submitted to the board of public education.

(2) The council shall submit a written report annually to the board of public education with its recommendations for the above areas. The council may submit recommendations to the board of public education at other times that the council considers appropriate.

(3) The board of public education shall:

(a) at a regularly scheduled meeting, consider any recommendations and reports of the council; and

(b) approve, disapprove, or modify each recommendation of the council by majority vote of the board.

History: En. Sec. 4, Ch. 465, L. 1987; amd. Sec. 27, Ch. 83, L. 1989.

Part 2

Teacher Employment — Tenure — Indian Studies

20-4-201. Employment of teachers and specialists by contract. (1) The trustees of any district shall have the authority to employ any person as a teacher or specialist, but only a person who holds a valid Montana teacher or specialist certificate or for whom an emergency authorization of employment has been issued that qualifies such person to perform the duties prescribed by the trustees for the position of employment. Each teacher or specialist shall be employed under written contract, and each contract of employment shall be authorized by a proper resolution of the trustees and shall be executed in duplicate by the chairman of the trustees and the clerk of the district in the name of the district and by the teacher or specialist.

(2) No contract of employment with a teacher or specialist shall require such teacher or specialist to teach more than 5 days a week or on any holiday recognized by 20-1-305. No deduction shall be made from a teacher's or specialist's salary by reason of the fact that a holiday falls on a school day. Any teacher's or specialist's contract made in conflict with the 5-days-per-week provision of this section shall not be enforceable against the teacher or specialist.

(3) Whenever the board of trustees of two or more school districts form a joint board of trustees under the provisions of 20-3-361, such joint board of trustees may execute a contract of employment with a teacher or specialist who shall serve the districts. When such a contract is executed, the districts shall prorate the compensation provided by such contract on the basis of the total number of instructional hours expended by such teacher or specialist within each district.

(4) Any contract executed under the provisions of this section may contain the oath or affirmation prescribed in 20-4-104, and the teacher or specialist shall subscribe to such oath or affirmation before an officer authorized by law to administer oaths.

History: En. 75-6102 by Sec. 83, Ch. 5, L. 1971; R.C.M. 1947, 75-6102; amd. Sec. 14, Ch. 511, L. 1979; amd. Sec. 3, Ch. 308, L. 1987.

Cross-References

Discrimination on account of religious ideas prohibited, Art. II, sec. 4, Mont. Const.

Oaths, Title 1, ch. 6.

Nepotism, Title 2, ch. 2, part 3.

Depriving members of organized militia of employment, 10-1-603.

Leave of absence of public employees attending training camp, 10-1-604.

Reemployment of veterans, Title 10, ch. 2, part 2.

Powers of joint board of trustees, 20-3-362.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference — not applicable to schools, 39-30-103.

20-4-202. Teacher and specialist certification registration. (1) Any person employed as a teacher, specialist, principal, or district superintendent shall register his certificate or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county wherein he is employed in order to validate his employment status and permit payment under his employment contract. If a teacher or specialist does not register his certificate with the county superintendent within 60 calendar days after he begins to perform his services, he shall not be eligible to receive any further compensation under his contract of employment until he has registered his certificate. After the schools of a district have been open for 60 calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher or specialist who has registered his current valid certificate, and the district shall not pay any teacher who has not registered his certificate until the county superintendent does notify the district of such registration.

(2) A teacher or specialist employed by a joint district shall register his certificate with the county superintendent of the county in which he is working. A teacher or specialist employed by a special education cooperative shall register his certificate with the county superintendent of the county in which the special education cooperative is based.

History: En. 75-6106 by Sec. 87, Ch. 5, L. 1971; amd. Sec. 3, Ch. 277, L. 1977; R.C.M. 1947, 75-6106; amd. Sec. 15, Ch. 511, L. 1979; amd. Sec. 1, Ch. 330, L. 1987.

Cross-References

Duty of County Superintendent to register teacher or specialist certificates, 20-3-205.

20-4-203. Teacher tenure. (1) Except as provided in 20-4-208, whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be reelected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with the teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

(2) The tenure of a teacher with a district may not be impaired upon termination of services of the teacher if the following conditions exist:

(a) the tenure teacher is terminated because the financial condition of the district requires a reduction in the number of teachers employed; and

(b) continued employment rights are provided for in a collectively bargained contract of the district.

History: En. 75-6103 by Sec. 84, Ch. 5, L. 1971; amd. Sec. 1, Ch. 49, L. 1971; R.C.M. 1947, 75-6103; amd. Sec. 16, Ch. 511, L. 1979; amd. Sec. 1, Ch. 521, L. 1983; amd. Sec. 1, Ch. 479, L. 1989; amd. Sec. 1, Ch. 204, L. 1991.

Compiler's Comments

Repealer: Section 2, Ch. 114, L. 1993, repealed sec. 4, Ch. 204, L. 1991, which provided that the 1991 act, amending 20-4-203 and enacting 20-4-208, did not apply to a person who was employed in an administrative position before October 1, 1991. Repealer effective March 18, 1993.

Cross-References

Tenure of teachers employed by cooperatives, 20-7-456.

20-4-204. Termination of tenure teacher services. (1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall, before May 1 of the current school fiscal year, notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

(a) the statement of the reason or reasons that led to the recommendation for termination; and

(b) a printed copy of this section for the teacher's information.

(3) The teacher may, in writing, waive the right to a hearing. Unless the teacher waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees shall:

(a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

(b) resolve at the conclusion of the hearing to terminate the teacher or to reject the recommendation for termination.

(5) The tenure teacher may appeal a decision to terminate to the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law.

(6) Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title.

History: En. 75-6104 by Sec. 85, Ch. 5, L. 1971; amd. Sec. 1, Ch. 157, L. 1974; amd. Sec. 2, Ch. 306, L. 1974; R.C.M. 1947, 75-6104; amd. Sec. 2, Ch. 521, L. 1983; amd. Sec. 1, Ch. 56, L. 1985; amd. Sec. 1, Ch. 510, L. 1987.

Cross-References

Authority of Superintendent of Public Instruction to hear controversy appeals, 20-3-107.

Authority of County Superintendent to hear controversy appeals, 20-3-210.

Dismissal of teachers by cooperative, 20-7-456.

20-4-205. Notification of tenure teacher reelection — acceptance. (1) The trustees shall provide written notice by May 1 to all tenure teachers who have been reelected. Any tenure teacher who does not receive notice of reelection or termination shall be automatically reelected for the ensuing school fiscal year.

(2) Any tenure teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such reelection within 20 days after the receipt of the notice of reelection, and failure to so notify the trustees within 20 days shall constitute conclusive evidence of his nonacceptance of the tendered position.

History: En. 75-6105 by Sec. 86, Ch. 5, L. 1971; R.C.M. 1947, 75-6105; amd. Sec. 1, Ch. 574, L. 1989.

20-4-206. Notification of nontenure teacher reelection — acceptance — termination and statement of reason. (1) The trustees shall provide written notice by May 1 to all nontenure teachers who have been reelected. A nontenure teacher who does not receive written notice of reelection or termination is automatically reelected for the ensuing school fiscal year.

(2) A nontenure teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of reelection within 20 days after the receipt of the notice of reelection. Failure to so notify the trustees within 20 days may be considered nonacceptance of the tendered position.

(3) When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after receipt of the notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within 10 days after receipt of the request, the trustees shall furnish to the teacher a true statement of reasons for termination.

(4) If a nontenure teacher believes the reasons provided by the trustees are not true, the teacher may request in writing within 10 days of receipt of the statement of reasons that the county superintendent hold a hearing in accordance with 20-3-210 to determine whether the reasons are true. A hearing must be scheduled within 10 days and held within 45 days after receipt of the request, except that the period may be extended upon agreement between the trustees and the teacher. The burden of proof that the reasons are not true rests with the teacher, and the showing must be demonstrated by clear and convincing evidence.

(5) If, after a hearing, the county superintendent determines that the reasons are not true, the county superintendent shall order the trustees to offer the teacher a contract for the ensuing school fiscal year.

(6) The provisions of this section do not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

History: En. Sec. 1, Ch. 324, L. 1973; amd. Sec. 1, Ch. 87, L. 1975; amd. Sec. 1, Ch. 142, L. 1975; R.C.M. 1947, 75-6105.1; amd. Sec. 2, Ch. 510, L. 1987; amd. Sec. 2, Ch. 439, L. 1991.

20-4-207. Dismissal of teacher under contract. (1) The trustees of any district may dismiss a teacher before the expiration of his employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees.

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal; or

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the recommendation in writing to each trustee of the district and to the teacher.

(c) The notice must state the specific instances of behavior or acts that led to the recommendation for dismissal.

(3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of his right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on a hearing date not less than 5 days or more than 20 days from the notice of intent to recommend dismissal.

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of the hearing to dismiss the teacher or to reject the recommendation for dismissal.

(4) With the exception of a county superintendent, a person who recommends dismissal pursuant to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the welfare of the students or the effective operation of the school district.

(5) Any teacher who has been dismissed may in writing within 10 days appeal such dismissal to the county superintendent. Following such appeal, a hearing must be scheduled within 10 days and held within 30 days after the appeal, except that the period may be extended upon agreement between the teacher and the trustees. If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal.

History: En. 75-6107 by Sec. 88, Ch. 5, L. 1971; amd. Sec. 1, Ch. 327, L. 1971; R.C.M. 1947, 75-6107; amd. Sec. 2, Ch. 56, L. 1985; amd. Sec. 1, Ch. 28, L. 1989.

Cross-References

Authority of Superintendent of Public Instruction to hear controversy appeals, 20-3-107.

Authority of County Superintendent to hear controversy appeals, 20-3-210.

Authority of trustees to employ and dismiss teachers, 20-3-324.

Dismissal of teachers by cooperative, 20-7-456.

20-4-208. Transfer from administrative position. (1) A tenure teacher serving in an administrative position may be assigned to a teaching position with a reduction in salary when the economic conditions of the district require a reduction of administrative staff. The salary for the new position must be the same as the salary that the teacher would have received if the teacher had been continuously employed in the new position rather than in the administrative position.

(2) If a board policy or a collective bargaining agreement provides seniority rights for teachers, a district that assigns a tenure teacher serving in an administrative position to a teaching position shall recognize for teacher seniority purposes the tenure teacher's time of service in the administrative position.

(3) As used in this section, the term:

(a) "administrative position" means a position that the trustees of a district designate as administrative or supervisory in nature, not including the position of district superintendent; and

(b) "reduction of administrative staff" is limited to reductions necessary because of declining enrollment or financial exigency.

(4) When a tenure teacher serving in an administrative position is to be transferred under this section, the teacher must be notified prior to May 1 by certified letter or by personal notification for which a signed receipt must be obtained. The notification must include:

(a) a statement of the reason or reasons for the reduction of administrative staff; and

(b) a printed copy of this section for the teacher's information.

(5) A tenure teacher who receives notice under subsection (4) may request in writing, within 10 days of the notice, a hearing before the board of trustees. The board of trustees shall set the hearing not less than 10 days or more than 20 days from receipt of the request unless both parties agree to an extension. If a hearing is requested, the trustees shall:

(a) conduct the hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1); and

(b) resolve at the end of the hearing to uphold the transfer or to reject the transfer and return the teacher to the administrative position.

(6) A tenure teacher may appeal a decision under this section to the county superintendent as provided in 20-3-210. The county superintendent shall conduct a hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1).

(7) The teacher or the trustees may appeal the determination of the county superintendent to the superintendent of public instruction as provided in 20-3-107.

(8) A tenure teacher who is transferred to a teaching position under this section must be offered the next comparable administrative position for which he is endorsed that becomes available in the district.

History: En. Sec. 2, Ch. 204, L. 1991; amd. Sec. 1, Ch. 114, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 114 inserted (2) providing for recognition of the seniority of a tenured teacher assigned to a teaching position after serving in an administrative position; and made minor changes in style. Amendment effective March 18, 1993.

Repealer: Section 2, Ch. 114, L. 1993, repealed sec. 4, Ch. 204, L. 1991, which provided that the 1991 act, amending 20-4-203 and enacting 20-4-208, did not apply to a person who was employed in an administrative position before October 1, 1991. Repealer effective March 18, 1993.

20-4-209 and 20-4-210 reserved.

20-4-211. American Indian studies — definitions. (1) As used in 20-4-211 through 20-4-214, "American Indian studies" means instruction pertaining to the history, traditions, customs, values, beliefs, ethics, and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) As used in 20-4-211 through 20-4-214, "instruction" means:

(a) a formal course of study offered by a unit of higher education developed with the advice and assistance of Indian people;

(b) inservice training developed by the superintendent of public instruction in cooperation with educators of Indian descent and made available to school districts; or

(c) inservice training provided by a local board of trustees, which is developed and conducted in cooperation with local Indian people.

History: En. Sec. 2, Ch. 464, L. 1973; R.C.M. 1947, 75-6130.

Cross-References

Pupil-instruction-related days for inservice training, 20-1-304.

20-4-212. Policy to recognize heritage of American Indians. It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of the American Indians and to be committed in its educational goals to the preservation of their cultural heritage. It is the intent of 20-4-211 through 20-4-214, predicated on the belief that school personnel should relate effectively with Indian students and parents, to provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

History: En. Sec. 1, Ch. 464, L. 1973; R.C.M. 1947, 75-6129.

Cross-References

Preservation of cultural integrity of Indians, Art. X, sec. 1, Mont. Const.

20-4-213. Qualification in Indian studies — trustees and noncertified personnel. (1) Any board of trustees for an elementary or secondary public school district on or for a public school located in the vicinity of an Indian reservation where the enrollment of Indian children qualifies the school for federal funds for Indian education programs may require that all of its certified personnel satisfy the requirements for instruction in American Indian studies as defined in 20-4-211. This requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees.

(2) Members of boards of trustees and all noncertified personnel in public school districts on or in the vicinity of Indian reservations are encouraged to satisfy the requirements for instruction in American Indian studies as defined in 20-4-211.

History: En. Sec. 3, Ch. 464, L. 1973; R.C.M. 1947, 75-6131; amd. Sec. 1, Ch. 458, L. 1979.

20-4-214. Other schools encouraged to comply with requirements on Indian studies. Boards of trustees for all public school districts other than those defined in 20-4-213 and governing authorities for all nonpublic schools in Montana are encouraged to comply with the provisions and intent of 20-4-211 through 20-4-214.

History: En. Sec. 4, Ch. 464, L. 1973; R.C.M. 1947, 75-6132.

Part 3

Teachers' Powers, Duties, and Privileges

20-4-301. Duties of teacher — nonpayment for failure to comply. (1) Any teacher under contract with a district shall:

(a) conform to and enforce the laws, board of public education policies, and the policies of the trustees of the district;

(b) utilize the course of instruction prescribed by the trustees;

(c) keep, in a neat and businesslike manner, a teacher's register in the form and on the blanks prescribed by the superintendent of public instruction;

(d) within 10 days after the conclusion of each school semester, prepare a report in the manner and on the forms prescribed by the superintendent of public instruction, which must include the pupil attendance and absence data from his teacher's register that is necessary to calculate ANB. The report must be submitted to:

(i) the district superintendent, if there is one;

(ii) the principal of the school, if there is one and there is no district superintendent; or

(iii) the county superintendent or all county superintendents when the teacher is reporting for a joint district, if there is no district superintendent or principal;

(e) exercise due diligence in the care of school grounds and buildings, furniture, equipment, books, and supplies; and

(f) provide moral and civic instruction by:

(i) endeavoring to impress the pupils with the principles of morality, truth, justice, and patriotism;

(ii) teaching the pupils to avoid idleness, profanity, and falsehood;

(iii) instructing the pupils in the principles of free government and training them to comprehend the rights, responsibilities, and dignity of American citizenship.

(2) The trustees are authorized to withhold the salary warrant of any teacher who does not comply with the provisions of subsection (1)(a) or (1)(b) until the teacher does comply with the provisions.

(3) The trustees may not pay any teacher his last month's salary until he has provided a complete and accurate semester report to the required person, as determined by the person and as required in subsection (1)(d) of this section.

History: En. 75-6108 by Sec. 89, Ch. 5, L. 1971; R.C.M. 1947, 75-6108; amd. Sec. 1, Ch. 337, L. 1989.

Cross-References

ANB defined, 20-1-101.

Abused or neglected child — duty to report, 41-3-201.

20-4-302. Discipline and punishment of pupils — definition of corporal punishment — penalty — defense. (1) A teacher or principal has the authority to hold a pupil to a strict accountability for disorderly conduct in school, on the way to or from school, or during intermission or recess.

(2) For the purposes of this section, "corporal punishment" means knowingly and purposely inflicting physical pain on a pupil as a disciplinary measure.

(3) A person who is employed or engaged by a school district may not inflict or cause to be inflicted corporal punishment on a pupil.

(4) (a) A person who is employed or engaged by a school district may use physical restraint, defined as the placing of hands on a pupil in a manner that is reasonable and necessary to:

(i) quell a disturbance;

(ii) provide self-protection;

(iii) protect the pupil or others from physical injury;

(iv) obtain possession of a weapon or other dangerous object on the person of the pupil or within control of the pupil;

(v) maintain the orderly conduct of a pupil including but not limited to relocating a pupil in a waiting line, classroom, lunchroom, principal's office, or other on-campus facility; or

(vi) protect property from serious harm.

(b) Physical pain resulting from the use of physical restraint as defined in subsection (4)(a) does not constitute corporal punishment as long as the restraint is reasonable and necessary.

(5) A teacher in a district employing neither a district superintendent nor a principal at the school where the teacher is assigned has the authority to suspend a pupil for good cause. When either a district superintendent or a school principal is employed, only the superintendent or principal has the authority to suspend a pupil for good cause. Whenever a teacher suspends a pupil, the teacher shall notify the trustees and the county superintendent immediately of the action.

(6) A teacher has the duty to report the truancy or incorrigibility of a pupil to the district superintendent, the principal, the trustees, or the county superintendent, whichever is applicable.

(7) If a person who is employed or engaged by a school district uses corporal punishment or more physical restraint than is reasonable or necessary, the person is guilty of a misdemeanor and, upon conviction of the misdemeanor by a court of competent jurisdiction, shall be fined not less than $25 or more than $500.

(8) A person named as a defendant in an action brought under this section may assert as an affirmative defense that the use of physical restraint was reasonable or necessary. If that defense is denied by the person bringing the charge, the issue of whether the restraint used was reasonable or necessary must be determined by the trier of fact.

History: **En. 75-6109 by Sec. 90, Ch. 5, L. 1971; amd. Sec. 1, Ch. 388, L. 1977; R.C.M. 1947, 75-6109; amd. Sec. 1, Ch. 135, L. 1981; amd. Sec. 1, Ch. 325, L. 1991.**

Cross-References

Duties of pupils — sanctions, 20-5-201.

Suspension and expulsion of pupil, 20-5-202.

Confidential relationship between student and school personnel, 26-1-809.

Use of force by parent, guardian, or teacher, 45-3-107.

20-4-303. Abuse of teachers. Any parent, guardian, or other person who shall insult or abuse a teacher anywhere on the school grounds or school premises shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined no less than $25 or more than $500.

History: **En. 75-6110 by Sec. 91, Ch. 5, L. 1971; amd. Sec. 1, Ch. 100, L. 1971; R.C.M. 1947, 75-6110.**

20-4-304. Attendance at instructional and professional development meetings. The trustees of a school district shall close the schools of the district for the annual instructional and professional development meetings of teachers' organizations. A teacher may attend instructional and professional development meetings without loss of salary or attend other appropriate inservice training, as may be prescribed by the trustees, without loss of salary. If a teacher does neither, he must not be paid.

History: **En. 75-6111 by Sec. 92, Ch. 5, L. 1971; amd. Sec. 1, Ch. 200, L. 1971; R.C.M. 1947, 75-6111; amd. Sec. 2, Ch. 638, L. 1989.**

Cross-References

Traveling expenses of officers attending meetings, 20-1-211.

Pupil-instruction-related days, 20-1-304.

Part 4

District Superintendent and Principal

20-4-401. Appointment and dismissal of district superintendent or county high school principal. (1) The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school shall employ and appoint a district superintendent, except that they may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

(2) Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, such joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district shall separately employ and appoint a district superintendent or county high school principal.

(3) School districts other than those provided in subsection (2) that form a joint board of trustees may jointly employ and appoint a district superintendent as allowed in 20-3-362.

(4) The written contract of employment of a district superintendent or a county high school principal shall be authorized by the proper resolution of the trustees of the district or the joint board of trustees and executed in duplicate by the chairman of the trustees or joint board of trustees and the clerks of the districts in the name of the districts and by the district superintendent or the county high school principal. Such contract shall be for a term of not more than 3 years, and after the second successive contract, the contract shall be deemed to be renewed for a further term of 1 year from year to year thereafter unless the trustees shall, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of his existing contract. The trustees shall take such termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate his services at the expiration of his current contract not later than February 1 of the last year of such contract.

(5) Whenever a joint board of trustees employs a person as the district superintendent under subsection (2) or (3), the districts shall prorate the

compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

(6) At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies such person to hold such position becomes invalid, the trustees of the district or the joint board of trustees shall discharge such person as the district superintendent or county high school principal regardless of the unexpired term of his contract. The trustees shall not compensate him under the terms of his contract for any services rendered subsequent to the date of the invalidation of his teacher certificate.

(7) No district superintendent or county high school principal shall engage in any work or activity which the trustees may deem to be in conflict with his duties and employment as the district superintendent or county high school principal.

History: En. 75-6112 by Sec. 93, Ch. 5, L. 1971; amd. Sec. 1, Ch. 105, L. 1973; R.C.M. 1947, 75-6112; amd. Sec. 4, Ch. 308, L. 1987; amd. Sec. 28, Ch. 83, L. 1989.

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Powers of joint board of trustees, 20-3-362.

20-4-402. Duties of district superintendent or county high school principal. The district superintendent or county high school principal is the executive officer of the trustees and, subject to the direction and control of the trustees, he shall:

(1) have general supervision of all schools of the district and the personnel employed by the district;

(2) implement and administer the policies of the trustees of the district;

(3) develop and recommend courses of instruction to the trustees for their consideration and approval in accordance with the provisions of 20-7-111;

(4) select all textbooks and submit the selections to the trustees for their approval in accordance with the provisions of 20-7-602;

(5) select all reference and library books and submit the selections to the trustees for their approval in accordance with provisions of 20-7-204;

(6) have general supervision of all pupils of the district, enforce the compulsory attendance provisions of this title, and have the authority to suspend for good cause any pupil of the district;

(7) report the cumulative pupil attendance and pupil absence of the district and any other pupil information required by the report form prescribed by the superintendent of public instruction to the county superintendent, or county superintendents when reporting for a joint district, within 10 days after the conclusion of each school semester; and

(8) perform any other duties in connection with the district as the trustees may prescribe.

History: En. 75-6113 by Sec. 94, Ch. 5, L. 1971; R.C.M. 1947, 75-6113; amd. Sec. 2, Ch. 135, L. 1981; amd. Sec. 2, Ch. 337, L. 1989.

Cross-References

Powers and duties of trustees, 20-3-324.

Attendance, Title 20, ch. 5, part 1.

Suspension and expulsion, Title 20, ch. 5, part 2.

20-4-403. Powers and duties of principal. (1) Whenever the trustees of a district employ and appoint a school principal but do not employ and appoint a district superintendent, such principal shall perform the duties of a district superintendent as prescribed in subsections (4), (5), (6), (7), and (8) of 20-4-402 and shall have general supervision of such school and the personnel assigned to such school.

(2) If granted authority by the board of trustees, a school principal in a district that does employ and appoint a district superintendent may suspend for good cause any pupil of the school where the principal is employed.

History: En. 75-6114 by Sec. 95, Ch. 5, L. 1971; R.C.M. 1947, 75-6114; amd. Sec. 3, Ch. 135, L. 1981.

CHAPTER 5

PUPILS

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Chapter Cross-References

Penalty for abuse of students, 20-4-302.

Fees for school supplies, 20-9-214.

Powers of trustees to require pupils to pay fees, 20-9-214.

Extracurricular fund for pupil functions, 20-9-504.

Confidential communications by students, 26-1-809.

Use of force by parent, guardian, or teacher, 45-3-107.

Part 1
Attendance

Part Cross-References

School terms and holidays, Title 20, ch. 1, part 3.

Duty of trustees to administer attendance laws, 20-3-324.

School enrollment procedures to aid identification of missing children, 44-2-511.

20-5-101. Admittance of child to school. (1) The trustees shall assign and admit any child to a school in the district when the child is:

(a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but has not yet reached his 19th birthday;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of any district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section.

(4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney Act (P.L. 100-77), to a school in the district regardless of residence. Tuition for a nonresident child shall be paid in accordance with the tuition provisions of this title.

History: En. 75-6302 by Sec. 115, Ch. 5, L. 1971; R.C.M. 1947, 75-6302; amd. Sec. 2, Ch. 334, L. 1979; amd. Sec. 2, Ch. 558, L. 1979; amd. Sec. 74, Ch. 575, L. 1981; amd. Sec. 1, Ch. 120, L. 1989.

Cross-References

Free public education required, Art. X, sec. 1, Mont. Const.

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

General rules for determining residence, 1-1-215.

School enrollment procedures to aid identification of missing children, 44-2-511.

Illegal discrimination, Title 49, ch. 2.

Governmental code of fair practices, Title 49, ch. 3.

20-5-102. Compulsory enrollment and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade.

(2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless the child is:

(a) enrolled in a school of another district or state under any of the tuition provisions of this title;

(b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(c) excused from compulsory school attendance upon a determination by a district judge that attendance is not in the best interest of the child;

(d) excused by the board of trustees upon a determination that attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or

(e) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection(e), a home school is the instruction by a parent of his child, stepchild, or ward in his residence and a nonpublic school includes a parochial, church, religious, or private school.

History: En. 75-6303 by Sec. 116, Ch. 5, L. 1971; amd. Sec. 1, Ch. 389, L. 1971; amd. Sec. 3, Ch. 91, L. 1973; amd. Sec. 2, Ch. 137, L. 1975; R.C.M. 1947, 75-6303; amd. Sec. 1, Ch. 504, L. 1979; amd. Sec. 1, Ch. 355, L. 1983; amd. Sec. 1, Ch. 249, L. 1991.

Cross-References

Supervised home and correspondence study, 20-7-117, 20-10-121, 20-10-125, 20-10-142.

Duty of parent or guardian to make application for admission of child to Montana School for the Deaf and Blind, 20-8-105.

20-5-103. Compulsory attendance and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to attend the school in which he is enrolled for the school term and each school day therein prescribed by the trustees of the district until the later of the following dates:

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade.

(2) The provisions of subsection (1) do not apply in the following cases:

(a) The child has been excused under one of the conditions specified in 20-5-102.

(b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees.

(c) The child has been suspended or expelled under the provisions of 20-5-202.

History: En. 75-6304 by Sec. 117, Ch. 5, L. 1971; amd. Sec. 8, Ch. 266, L. 1977; R.C.M. 1947, 75-6304; amd. Sec. 2, Ch. 504, L. 1979.

Cross-References

Notice to parents of children absent from school, 44-2-507.

20-5-104. Attendance officer. In order to enforce the compulsory attendance provisions of this title, each district shall have at least one person serving as an attendance officer according to the following requirements:

(1) districts of the first and second class shall employ and appoint one or more attendance officers;

(2) districts of the third class may employ and appoint an attendance officer or may appoint a constable or other peace officer as an attendance officer; or

(3) the county superintendent shall be the attendance officer in third-class districts that do not appoint an attendance officer.

History: En. 75-6305 by Sec. 118, Ch. 5, L. 1971; R.C.M. 1947, 75-6305.

Cross-References

Additional positions of County Superintendent, 20-3-206.

20-5-105. Attendance officer — powers and duties. The attendance officer of any district shall:

(1) be vested with police powers, the authority to serve warrants, and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this title;

(2) take into custody any child subject to compulsory attendance who is not excused under the provisions of this title and conduct him to the school in which he is or should be enrolled;

(3) do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees;

(4) institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this title;

(5) keep a record of his transactions for the inspection and information of the trustees and make reports in the manner and to whomever the trustees designate; and

(6) perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district.

History: En. 75-6306 by Sec. 119, Ch. 5, L. 1971; R.C.M. 1947, 75-6306.

Cross-References

Duties of District Superintendent or county high school principal to enforce attendance laws, 20-4-402.

20-5-106. Truancy. (1) Whenever the attendance officer discovers a child truant from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction and has not been excused under the provisions of this title, he shall notify in writing the parent, guardian, or other person responsible for the care of the child that the continued truancy or nonenrollment of his child shall result in his prosecution under the provisions of this section. If the child is not enrolled and in attendance at a school or excused from school within 2 days after the receipt of the notice, the attendance officer shall file a complaint against such person in a court of competent jurisdiction.

(2) If convicted, such person shall be fined not less than $5 or more than $20. In the alternative, he may be required to give bond in the penal sum of

$100, with sureties, conditioned upon his agreement to cause the enrollment of his child within 2 days thereafter in a school providing the courses of instruction required by this title and to cause the child to attend that school for the remainder of the current school term. If a person refuses to pay a fine and costs or to give a bond as ordered by the court, he shall be imprisoned in the county jail for a term of not less than 10 days or more than 30 days.

History: En. 75-6307 by Sec. 120, Ch. 5, L. 1971; R.C.M. 1947, 75-6307.

Cross-References

Duty of teachers to report truancy, 20-4-302.

20-5-107. Incapacitated and indigent child attendance. In lieu of the provisions of 20-5-106 and when an attendance officer is satisfied that a pupil or a child subject to compulsory attendance is not able to attend school because he does not have the physical capacity or he is absolutely required to work at home or elsewhere in order to support himself or his family, the attendance officer shall report the case to the authorities charged with the relief of the poor. It shall be the duty of such welfare authorities to offer such relief as will enable the child to attend school. If the parent, guardian, or other person who is responsible for the care of the child denies or neglects the assistance offered to enable the child to attend school, the child shall be committed to a state institution, at the discretion of the court.

History: En. 75-6308 by Sec. 121, Ch. 5, L. 1971; R.C.M. 1947, 75-6308.

20-5-108. Tribal agreement with district for Indian child compulsory attendance and other agreements. It shall be the duty of the trustees of any district where an Indian child resides to require the child to attend school in the same manner as any other child residing in the district, unless it is prohibited by the laws or treaties affecting the Indian tribe of which such child is a member or the Indian reservation on which such child resides. When such a prohibition exists, the trustees of any district shall have the authority to accept from the tribal council or other governing body of the Indian tribe or the Indian reservation authorization to enforce the compulsory attendance provisions of this title and compel the school attendance of the Indian children belonging to the tribe or residing on the reservation.

History: En. 75-6309 by Sec. 122, Ch. 5, L. 1971; R.C.M. 1947, 75-6309(part).

Cross-References

Cooperative agreements with Indian tribes, Title 18, ch. 11.

20-5-109. Nonpublic school requirements for compulsory enrollment exemption. To qualify its students for exemption from compulsory enrollment under 20-5-102, a nonpublic or home school shall:

(1) maintain records on pupil attendance and disease immunization and make the records available to the county superintendent of schools on request;

(2) provide at least 180 days of pupil instruction or the equivalent in accordance with 20-1-301 and 20-1-302;

(3) be housed in a building that complies with applicable local health and safety regulations;

(4) provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111; and

(5) in the case of home schools, notify the county superintendent of schools, of the county in which the home school is located, in each school fiscal year of the student's attendance at the school.

History: En. Sec. 2, Ch. 355, L. 1983; amd. Sec. 3, Ch. 498, L. 1989.

Cross-References

Disease immunization, Title 20, ch. 5, part 4.

School enrollment procedures to aid identification of missing children, 44-2-511.

Building codes and standards, Title 50, ch. 60.

20-5-110. School district assessment for placement of a child who enrolls from a nonaccredited, nonpublic school. The trustees of a school district shall:

(1) adopt a district policy on assessment for placement of any child who enrolls in a school of the district and whose previous place of instruction was a nonpublic school that is not accredited;

(2) include in the adopted policy the following provisions:

(a) the specific assessment for placement to be administered to any child subject to the provisions of subsection (1);

(b) a procedure for grade and program placement of the child based on results of the assessment for placement, including considerations for the age and identified abilities of the child; and

(c) a hearing process before the board of trustees of the district if the parent or guardian of a child is not in agreement with the placement of the child and requests a hearing before the board; and

(3) administer the adopted policy required in subsection (1) in a uniform and fair manner.

History: En. Sec. 1, Ch. 498, L. 1989.

20-5-111. Responsibilities and rights of parent who provides home school — rights of child in home school. Subject to the provisions of 20-5-109, a parent has the authority to instruct his child, stepchild, or ward in a home school and is solely responsible for:

(1) the educational philosophy of the home school;

(2) the selection of instructional materials, curriculum, and textbooks;

(3) the time, place, and method of instruction; and

(4) the evaluation of the home school instruction.

History: En. Sec. 1, Ch. 444, L. 1991.

Part 2

Duties — Suspension and Expulsion

Part Cross-References

University students — qualifications and rights, Title 20, ch. 25, part 5.

20-5-201. Duties and sanctions. (1) A pupil shall:

(a) comply with the policies of the trustees and the rules of the school that the pupil attends;

(b) pursue the required course of instruction;

(c) submit to the authority of the teachers, principal, and district superintendent of the district; and

(d) be subject to the control and authority of the teachers, principal, and district superintendent while the pupil is in school or on school premises, on the way to and from school, or during intermission or recess.

(2) A pupil who continually and willfully disobeys the provisions of this section, shows open defiance of the authority vested in school personnel by this section, defaces or damages any school building, school grounds, furniture, equipment, book belonging to the district, or harms or threatens to harm another person or the person's property is liable for punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces or damages school property the pupil's parent or guardian is liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent, or any trustee and the proof of any damage.

(3) In addition to the sanctions prescribed in this section, the trustees of a high school district may deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from participating in school activities. The trustees may not take action under this subsection until the incident or infraction causing the consideration has been investigated and the trustees have determined that the high school pupil was involved in the incident or infraction.

(4) (a) A school district may withhold the grades, diploma, or transcripts of a pupil who is responsible for the cost of school materials or the loss or damage of school property until the pupil or the pupil's parent or guardian satisfies the obligation.

(b) A school district that decides to withhold a pupil's grades, diploma, or transcripts from the pupil and the pupil's parent or guardian pursuant to subsection (4)(a) shall:

(i) upon receiving notice that the pupil has transferred to another school district in the state, notify the pupil's parent or guardian in writing that the school district to which the pupil has transferred will be requested to withhold the pupil's grades, diploma, or transcripts until any obligation has been satisfied;

(ii) forward appropriate grades or transcripts to the school to which the pupil has transferred;

(iii) at the same time, notify the school district of any financial obligation of the pupil and request the withholding of the pupil's grades, diploma, or transcripts until any obligations are met;

(iv) when the pupil or the pupil's parent or guardian satisfies the obligation, inform the school district to which the pupil has transferred; and

(v) adopt a policy regarding a process for a pupil or the pupil's parent or guardian to appeal the school district's decision to request that another school district withhold a pupil's grades, diploma, or transcripts.

(c) Upon receiving notice that a school district has requested the withholding of the grades, diploma, or transcripts of a pupil under this subsection (4), a school district to which the pupil has transferred shall withhold the grades, diploma, or transcripts of the pupil until it receives notice, from the district that initiated the decision, that the decision has been rescinded under the terms of subsection (4)(a).

History: En. 75-6310 by Sec. 123, Ch. 5, L. 1971; R.C.M. 1947, 75-6310; amd. Sec. 1, Ch. 403, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 403 inserted (4) allowing the withholding of grades, transcripts, and the diploma of a pupil responsible for the cost of school materials or for the loss or damage of school property and providing a procedure for withholding and for an appeal; and made minor changes in style. Amendment effective April 19, 1993.

Cross-References

Penalty for disturbance of school, 20-1-206.

Power of teacher or principal over pupils, 20-4-302, 20-4-402, 20-4-403.

Liability of parent for property damage by minor, 40-6-237, 40-6-238.

20-5-202. Suspension and expulsion. As provided in 20-4-302, 20-4-402, and 20-4-403, any pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in suspending a pupil and to define the circumstances and procedures by which the trustees may expel a pupil. Expulsion shall be a disciplinary action available only to the trustees.

History: En. 75-6311 by Sec. 124, Ch. 5, L. 1971; R.C.M. 1947, 75-6311; amd. Sec. 4, Ch. 135, L. 1981.

20-5-203. Secret organization prohibited. (1) It shall be unlawful for any pupil to participate in or be a member of any secret fraternity or other secret organization that is in any degree a school organization. It also shall be unlawful for any pupil or other person to solicit any pupil to join any such prohibited secret fraternity or other secret organization.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $5 or more than $25 for each violation.

History: En. 75-6312 by Sec. 125, Ch. 5, L. 1971; R.C.M. 1947, 75-6312.

Part 3

Attendance Outside School District

Part Cross-References

Rules for determining residence, 1-1-215.

Duty of trustees to provide transportation, 20-10-121.

20-5-301 through 20-5-307. Repealed. Sec. 19, Ch. 563, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

20-5-301. En. 75-6313 by Sec. 126, Ch. 5, L. 1971; amd. Sec. 9, Ch. 266, L. 1977; R.C.M. 1947, 75-6313; amd. Sec. 1, Ch. 655, L. 1985; amd. Sec. 67, Ch. 370, L. 1987; amd. Sec. 22, Ch. 609, L. 1987; amd. Sec. 1, Ch. 492, L. 1989; amd. Sec. 1, Ch. 765, L. 1991.

20-5-302. En. 75-6314 by Sec. 127, Ch. 5, L. 1971; R.C.M. 1947, 75-6314.

20-5-303. En. 75-6320 by Sec. 133, Ch. 5, L. 1971; R.C.M. 1947, 75-6320; amd. Sec. 2, Ch. 249, L. 1981; amd. Sec. 1, Ch. 263, L. 1983; amd. Sec. 1, Ch. 611, L. 1985; amd. Sec. 1, Ch. 42, L. 1989; amd. Sec. 186, Ch. 368, L. 1991.

20-5-304. En. 75-6315 by Sec. 128, Ch. 5, L. 1971; R.C.M. 1947, 75-6315.

20-5-305. En. 75-7201 by Sec. 340, Ch. 5, L. 1971; amd. Sec. 2, Ch. 251, L. 1974; R.C.M. 1947, 75-7201; amd. Sec. 1, Ch. 223, L. 1983; amd. Sec. 1, Ch. 279, L. 1987; amd. Sec. 11, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 380, L. 1991.

20-5-306. En. 75-7202 by Sec. 341, Ch. 5, L. 1971; amd. Sec. 3, Ch. 251, L. 1974; R.C.M. 1947, 75-7202.

20-5-307. En. 75-7203 by Sec. 342, Ch. 5, L. 1971; amd. Sec. 15, Ch. 277, L. 1977; R.C.M. 1947, 75-7203; amd. Sec. 1, Ch. 207, L. 1987; amd. Sec. 29, Ch. 83, L. 1989; amd. Sec. 4, Ch. 767, L. 1991; amd. Sec. 2, Ch. 133, L. 1993.

20-5-308 through 20-5-310 reserved.

20-5-311. Repealed. Sec. 19, Ch. 563, L. 1993.

History: **En. 75-6316 by Sec. 129, Ch. 5, L. 1971; amd. Sec. 1, Ch. 211, L. 1974; R.C.M. 1947, 75-6316; amd. Sec. 1, Ch. 401, L. 1979; amd. Sec. 1, Ch. 504, L. 1983; amd. Sec. 1, Ch. 652, L. 1985; amd. Sec. 2, Ch. 655, L. 1985; amd. Sec. 1, Ch. 394, L. 1987; amd. Sec. 2, Ch. 765, L. 1991.**

20-5-312. Repealed. Sec. 19, Ch. 563, L. 1993.

History: **En. 75-6317 by Sec. 130, Ch. 5, L. 1971; amd. Sec. 1, Ch. 251, L. 1974; R.C.M. 1947, 75-6317; amd. Sec. 2, Ch. 401, L. 1979; amd. Sec. 2, Ch. 504, L. 1983; amd. Sec. 1, Ch. 70, L. 1985; amd. Sec. 2, Ch. 279, L. 1987; amd. Sec. 3, Ch. 337, L. 1989; amd. Sec. 12, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 380, L. 1991; amd. Sec. 5, Ch. 767, L. 1991; amd. Sec. 3, Ch. 133, L. 1993.**

20-5-313. Repealed. Sec. 19, Ch. 563, L. 1993.

History: **En. 75-6321 by Sec. 134, Ch. 5, L. 1971; R.C.M. 1947, 75-6321; amd. Sec. 3, Ch. 401, L. 1979; amd. Sec. 1, Ch. 249, L. 1981; amd. Sec. 2, Ch. 263, L. 1983; amd. Sec. 2, Ch. 611, L. 1985; amd. Sec. 187, Ch. 368, L. 1991.**

20-5-314. Reciprocal attendance agreement with adjoining state or province. (1) The superintendent of public instruction may execute a reciprocal attendance agreement with the superintendent of public instruction or a department of education of any state or province adjoining Montana to allow a child who is a Montana resident to attend school in the adjoining state or province and a child of the adjoining state or province to attend school in Montana. In negotiating a reciprocal attendance agreement, the tuition rates prescribed by 20-5-323 are waived and the reciprocal tuition rate may be negotiated as a flat amount or an actual-cost-per-pupil amount. The superintendent of public instruction shall supply a copy of any reciprocal attendance agreement that is executed to the county superintendent of each county that may be affected by the agreement.

(2) An out-of-district attendance agreement approved under the provisions of 20-5-320 and 20-5-321 must be completed for a child's attendance at a school outside the state or for an out-of-state child to attend a school in Montana.

History: **En. 75-6318 by Sec. 131, Ch. 5, L. 1971; R.C.M. 1947, 75-6318; amd. Sec. 8, Ch. 563, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 563 throughout section substituted reference to attendance agreement for reference to tuition agreement; in three places in (1), after "state", inserted "or province" and in second sentence, after "prescribed by", substituted "20-5-323 are" for "20-5-305 and 20-5-312 shall be"; substituted present (2) regarding completion of an attendance agreement for former language that read: "Any tuition agreement approved under the provisions of 20-5-301, 20-5-302, or 20-5-311 for a child's attendance at a school outside of the state shall be completed in accordance with the applicable reciprocal tuition agreement"; and made minor changes in style.

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-5-315. Repealed. Sec. 195, Ch. 575, L. 1981.

History: **En. 75-6319 by Sec. 132, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1971; R.C.M. 1947, 75-6319.**

20-5-316. Out-of-state tuition. (1) The county superintendent of schools of the county of the district of residence shall make payments from the county basic tax for elementary schools for children who are placed in facilities outside the state of Montana pursuant to 20-5-321 but not under the provisions of Title 20, chapter 7, part 4.

(2) The county superintendent of schools of the county of residence shall make payments from the county basic special tax for high schools as provided in 20-9-334 for children who are placed in facilities outside the state of Montana as a result of a court order or placement by a state agency. This provision does not apply to children with disabilities that are defined under the provisions of Title 20, chapter 7, part 4.

History: En. Sec. 11, Ch. 765, L. 1991; Sec. 20-7-437, MCA 1991; redes. 20-5-316 by Sec. 21, Ch. 563, L. 1993.

Compiler's Comments

Code Commissioner Correction: In (1) the Code Commissioner substituted "20-5-321" for "20-5-301(3)(e)". Section 20-5-301 was repealed by Ch. 563, L. 1993. Section 20-5-321, enacted by sec. 2, Ch. 563, L. 1993, deals with the subject matter formerly contained in 20-5-301. Pursuant to sec. 84, Ch. 10, L. 1993, the Code Commissioner has substituted the reference.

20-5-317 through 20-5-319 reserved.

20-5-320. Attendance with discretionary approval. (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence or a public school in a district of another state or province that is adjacent to the county of the child's residence, subject to discretionary approval by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend. The application must be made on an out-of-district attendance agreement form supplied by the district and developed by the superintendent of public instruction.

(b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs incurred for transporting the child under Title 20, chapter 10.

(c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver must be applied equally to all students.

(3) An out-of-district attendance agreement approved under this section requires that the parent or guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district of residence and the district of choice approve the agreement.

(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not required.

(5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance agreements.

(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the result of an appeal must authorize the child named in the agreement to enroll in and attend the school named in the agreement for the designated school year.

(7) The trustees of the district where the child wishes to attend have the discretion to approve any attendance agreement.

(8) This section does not preclude the trustees of a district from approving an attendance agreement for educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(9) (a) A provision of this title may not be construed to deny a parent the right to send a child, at personal expense, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent has agreed to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the amount the parent or guardian of the child paid in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic corporation as defined in 35-1-113 whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection (9)(a) is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents or guardian;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation, parent, or guardian for the benefit and support of the district in which the child will attend school.

(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

(10) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as provided in Title 72, chapter 5, part 2.

History: En. Sec. 1, Ch. 563, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-5-321. Attendance with mandatory approval — tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district;

(b) the child resides in a location where, due to road or geographic conditions, it is impractical to attend the school nearest the child's residence;

(c) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided the child resides more than 3 miles from an elementary school in the resident district or the parent must move to the elementary district where the high school is located to enroll another child in high school;

(d) the child has been adjudicated by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 41-3-102, or a youth in need of supervision or a delinquent youth, as defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the department of family services and, as a result of the placement, is required to attend school outside of the child's district of residence; or

(e) the child is required to attend school outside of the district of residence as the result of a placement by a state agency or parent in a group home licensed by the state or an order of a court of competent jurisdiction.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver must be applied equally to all students.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

(4) Unless the child is a child with disabilities who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child.

History: En. Sec. 2, Ch. 563, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-5-322. Residency determination — notification — appeal for attendance agreement. (1) In considering an out-of-district attendance agreement, the trustees shall determine the child's district of residence on the basis of the provisions of 1-1-215.

(2) Within 10 days of the initial application for an agreement, the trustees of the district of choice shall notify the parent or guardian of the child and the trustees of the district of residence involved in the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

(3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the trustees shall provide copies of the approved or disapproved attendance agreement to the parent or guardian and to the child's district of residence.

(4) Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of the district of residence shall approve or disapprove the agreement under the provisions of this part and forward the completed agreement to the county superintendent of schools of the county of residence, the trustees of the district of choice, and the parent or guardian.

(5) If an out-of-district attendance agreement is disapproved or no action is taken, the parent may appeal the disapproval or lack of action to the county superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this title.

History: En. Sec. 3, Ch. 563, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-5-323. Tuition and transportation rates. (1) Except as provided in subsections (3) and (4), whenever a child has approval to attend a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the basis of the rate of tuition is a flat rate for each of the 15 district-size groupings determined by rule by the superintendent of public instruction by March 15 of each year, using statewide district expenditure and revenue data for the general fund, debt service fund, and retirement fund to determine the average district contribution.

(2) The tuition for children with disabilities must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils.

(3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district, person, or entity responsible for the tuition payments shall approve an agreement with the district of attendance for the tuition cost; and

(b) for a Montana resident student, the average district per-ANB foundation payment amount received in the year for which the tuition charges are calculated must be subtracted from the per-student program costs for a Montana resident student.

(4) When a child attends a public school of another state or province or has been placed by a state agency in an out-of-state residential program, the amount of daily tuition may not be greater than the average annual cost per student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with disabilities pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314; or

(c) an order issued under Title 40, chapter 4, part 2.

(5) The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost per student in the child's district of residence or 21.25 cents per mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year.

History: En. Sec. 4, Ch. 563, L. 1993; amd. Sec. 60, Ch. 633, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-5-324. Tuition report and payment provisions. (1) At the close of the school term of each school fiscal year and before July 15, the trustees of a district shall report to the county superintendent:

(a) the name and district of residence of each child who is attending a school of the district under an approved mandatory out-of-district attendance agreement;

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each reported child; and

(d) the names, districts of attendance, and amount of tuition to be paid by the district for resident students attending public schools out of state.

(2) The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides.

(3) Before July 30, the county superintendent shall report the information in subsection (1)(d) to the superintendent of public instruction, who shall determine the total foundation amount for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection.

(4) Notwithstanding the requirements of subsection (5), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) Except as provided in subsection (6), when a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall finance the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(6) When a child has mandatory approval under the provisions of 20-5-321, the tuition and transportation obligation for an elementary school child attending a school outside of the child's county of residence must be financed by the county basic tax for elementary districts, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the county of residence by the county basic tax for high school districts, as provided in 20-9-333, for the child's county of residence.

(7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate basic county tax account provided for in 20-9-334 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

(8) The superintendent of public instruction shall reimburse the district of residence from the state equalization account for the foundation amount determined in subsection (3).

(9) (a) Any tuition receipts received under the provisions of Title 20, chapter 7, part 4, or 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(b) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

History: En. Sec. 5, Ch. 563, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Part 4
Health

Part Cross-References

Duty of trustees to retain physician and nurse and to visit schools to examine conditions, 20-3-324.

Contributions by school boards to health boards authorized, 50-2-113.

20-5-401. Repealed. Sec. 13, Ch. 147, L. 1979.

History: En. 75-5933 by Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; R.C.M. 1947, 75-5933(19).

20-5-402. Definitions. For the purposes of this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school, preschool, or postsecondary school.

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) "Local health department" means a city, city-county, county, or district health department.

(5) "Local health officer" means a city, city-county, county, or district health officer.

(6) "Postsecondary school" means a vocational-technical center, a community college, a unit of the Montana university system, or a private university or college.

(7) "Preschool" means a place or facility that provides, on a regular basis and as its primary purpose, educational instruction designed for children 5 years of age or younger and that:

(a) serves no child under 5 years of age for more than 3 hours a day; and

(b) serves no child 5 years of age for more than 6 hours a day.

(8) "School" means a place or institution for the teaching of individuals, the curriculum of which is comprised of the work of:

(a) any combination of kindergarten through grade 12;

(b) a postsecondary school; or

(c) a preschool.

History: En. Sec. 1, Ch. 147, L. 1979; amd. Sec. 1, Ch. 644, L. 1989.

20-5-403. Immunization required — release and acceptance of immunization records. (1) The governing authority of any school other than a postsecondary school may not allow any person to commence attendance as a pupil unless the person:

(a) has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubella, mumps, and measles (rubeola) in the manner and with immunizing agents approved by the department, except that pertussis vaccination is not required for a person 7 years of age or older;

(b) has been immunized against Haemophilus influenza type "b" before enrolling in a preschool if under 5 years of age;

(c) qualifies for conditional attendance; or

(d) files for an exemption.

(2) (a) The governing authority of a postsecondary school may not allow any person to commence attendance as a pupil unless the person:

(i) has been immunized against rubella and measles (rubeola) in the manner and with immunizing agents approved by the department; or

(ii) files for an exemption.

(b) The governing authority of a postsecondary school may impose immunization requirements as a condition of attendance that are more stringent than those required by this part.

(3) A pupil who transfers from one school district to another may photocopy immunization records in the possession of the school of origin. The school district to which a pupil transfers shall accept the photocopy as evidence of immunization. Within 30 days after a transferring pupil ceases attendance at the school of origin, the school shall send the original immunization records for the pupil to the school district to which the pupil transfers.

History: En. Sec. 2, Ch. 147, L. 1979; amd. Sec. 1, Ch. 509, L. 1981; amd. Sec. 1, Ch. 102, L. 1983; amd. Sec. 2, Ch. 644, L. 1989; amd. Sec. 1, Ch. 165, L. 1991.

20-5-404. Conditional attendance. The governing authority of a school other than a postsecondary school may allow the commencement of attendance in school by a person who has not been immunized against each disease listed in 20-5-403 if that person has received one or more doses of polio, measles (rubeola), mumps, rubella, diphtheria, pertussis, Haemophilus influenza type "b", and tetanus vaccine, except that pertussis vaccine is not required for a person 7 years of age or older and Haemophilus influenza type "b" vaccine is required only for children under 5 years of age.

History: En. Sec. 3, Ch. 147, L. 1979; amd. Sec. 2, Ch. 102, L. 1983; amd. Sec. 3, Ch. 644, L. 1989; amd. Sec. 2, Ch. 165, L. 1991.

20-5-405. Medical or religious exemption. (1) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school or the person seeking to attend school, if an adult, signs and files with the governing authority, prior to the commencement of attendance each school year, a notarized affidavit on a form prescribed by the department stating that immunization is contrary to the religious tenets and practices of the signer, immunization of the person seeking to attend the school may not be required prior to attendance at the school. The statement must be maintained as part of the person's immunization records. A person who falsely claims a religious exemption is subject to the penalty for false swearing provided in 45-7-202.

(2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school, or the person seeking to attend school, if an adult, files with the governing authority a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or Canada stating that the physical condition of the person seeking to attend school or medical circumstances relating to him indicate that some or all of the required immunizations are not considered safe and indicating the specific nature and probable duration of the medical condition or circumstances which contraindicate immunization, he is exempt from the requirements of this part to the extent indicated by the physician's

statement. The statement must be maintained as part of the person's immunization records.

(3) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school attendance be exposed to such disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease.

History: En. Sec. 4, Ch. 147, L. 1979; amd. Sec. 3, Ch. 102, L. 1983; amd. Sec. 4, Ch. 644, L. 1989.

20-5-406. Immunization record. The governing authority of each school shall require written evidence of each pupil's immunization against the diseases listed in 20-5-403 and shall record the immunization of each pupil as part of his permanent school record on a form prescribed by the department.

History: En. Sec. 5, Ch. 147, L. 1979.

Cross-References

Public records, Title 2, ch. 6.

20-5-407. Rulemaking. The department may adopt rules necessary to implement the provisions of this part.

History: En. Sec. 6, Ch. 147, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

20-5-408. Enforcement. (1) The governing authority of any school other than a postsecondary school shall prohibit from further attendance any pupil allowed to attend conditionally who has failed to obtain the immunizations required by 20-5-403(1) within time periods established by the department until that pupil has been immunized as required by the department or unless that pupil has been exempted under 20-5-405.

(2) Each governing authority shall file a written report on the immunization status of all pupils under its jurisdiction with the department and the local health department at times and on forms prescribed by the department.

(3) The local and state health departments shall have access to all information relating to immunization of any pupil in any school.

History: En. Sec. 7, Ch. 147, L. 1979; amd. Sec. 4, Ch. 102, L. 1983; amd. Sec. 5, Ch. 644, L. 1989.

20-5-409. Failure to immunize or claim exemption — injunction. (1) A parent, guardian, or adult having the responsibility for the care and custody of a minor required by law to attend school shall elect to do one of the following:

(a) present evidence to the school that the minor has been immunized against the diseases specified in 20-5-403;

(b) take action to fully immunize the minor against the diseases listed in 20-5-403, in the manner and with immunizing agents approved by the department;

(c) file for an exemption pursuant to 20-5-405.

(2) If, as a result of the parent, guardian, or responsible adult's failure to make the election referred to in subsection (1), the minor is excluded from

school, the department or the local health department may seek an injunction requiring the parent, guardian, or responsible adult to elect and perform one of the alternatives listed in subsection (1).

(3) Injunction is the exclusive remedy for failure to take any of the actions referred to in subsection (1).

History: En. Sec. 8, Ch. 147, L. 1979.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

20-5-410. Civil penalty. (1) Any person who violates any provision of this part, any rule promulgated under this part, or any order made pursuant to this part, with the exception of 20-5-409 and any rule adopted or order issued pursuant to 20-5-409, is subject to a civil penalty not to exceed $500. The department or the local health department may institute and maintain any enforcement proceedings hereunder.

(2) Action under subsection (1) is not a bar to enforcement of this part or of rules or orders made under it by injunction or other appropriate civil remedies.

(3) An action for a civil remedy to enforce this part or rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened.

History: En. Sec. 9, Ch. 147, L. 1979.

20-5-411. Use of tobacco product in public school building or property prohibited. (1) An individual may not use a tobacco product in a public school building or property during school hours.

(2) Subsection (1) does not apply to the use of a tobacco product:

(a) in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member;

(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official; or

(d) by nonstudent adults in any area designated as a smoking area by the school administrator or by the board of trustees of the school district.

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) For the purposes of this section, the following definitions apply:

(a) "Public school building or property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

History: En. Sec. 9, Ch. 569, L. 1993.

CHAPTER 6

SCHOOL DISTRICTS

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Chapter Cross-References

County Commissioners' authority to divide county into school districts, 7-5-2103.

Interlocal cooperation commission, Title 7, ch. 11, part 2.

Part 1

School Districts — General Provisions

20-6-101. Definition of elementary and high school districts. (1) As used in this title, except as defined in 20-9-402 for bonding purposes or unless the context clearly indicates otherwise, the term "district" means the territory, regardless of county boundaries, organized under the provisions of this title to provide public educational services under the jurisdiction of the trustees prescribed by this title. High school districts may encompass all or parts of the territory of one or more elementary districts.

(2) (a) An elementary district is a district organized for the purpose of providing public education for all grades up to and including grade 8 and for preschool programs and kindergartens. An elementary district may be inactive if the district attaches to a high school district under the provisions of 20-6-701 to form a K-12 school district.

(b) A high school district is a district organized for the purpose of providing those public educational services authorized by this title for all grades beyond grade 8, including postsecondary programs, except those programs administered by community college districts or the Montana university system. A high school district with an attached elementary district may provide the educational services for an elementary district through the procedures established in 20-6-701 through 20-6-703.

(3) An elementary district is known as "District No. ...., ... County" and a high school district, except a high school district where a county high school is operated, is known as "High School District No. ...., ... County". A district is a body corporate and, as a body corporate, may sue and be sued, contract and be contracted with, and acquire, hold, use, and dispose of real or personal property for school purposes, within the limitations prescribed by law. Unless the context clearly indicates otherwise, the trustees of elementary districts and high school districts have the same types of powers, duties, and responsibilities authorized and imposed by the laws of Montana.

(4) Unless the context clearly indicates otherwise, an elementary district operating a high school in a county that has not been divided into high school

districts is considered a high school district under this title and the trustees of the elementary district are the trustees of the high school district. An elementary district operating a high school may not have the bonding authority of a high school district. However, the elementary district may exercise its bonding authority, in the manner provided by law, for high school purposes.

(5) As used in this title, unless the context clearly indicates otherwise, a county high school is considered a high school district subject to the limitations prescribed by law for a county high school as a result of its being a part of the county government. The boundaries of the high school district for a county high school are:

(a) the high school district boundaries established by the county high school boundary commission; or

(b) if no boundaries have been established, the county boundaries, except for any territory located in a joint high school district.

(6) A county high school recognized as a high school district under the provisions of subsection (5)(b) may not have a bonding authority. Instead, the county shall exercise its bonding authority in the manner provided in 20-9-451.

History: En. 75-6501 by Sec. 160, Ch. 5, L. 1971; R.C.M. 1947, 75-6501; amd. Sec. 6, Ch. 555, L. 1991.

Cross-References

Powers and duties of district trustees, 20-3-324.

School bonds, Title 20, ch. 9, part 4.

K-12 school district defined, 20-6-701.

20-6-102. Confirmation of existing district boundaries. All districts established under the laws of the state of Montana or the territory of Montana and defined by the boundaries described in the records of each county on January 26, 1971, shall be recognized as the districts of the state on such date.

History: En. 75-6502 by Sec. 161, Ch. 5, L. 1971; R.C.M. 1947, 75-6502.

20-6-103. Permanent record of district boundaries. (1) The board of county commissioners shall maintain a permanent record which plainly and definitely describes the boundaries of each district within the county. The county superintendent shall keep a transcript of the record in his office and shall be responsible for keeping the record current.

(2) If the county superintendent determines that the boundaries of any elementary district or high school district are in conflict or are incorrectly described, he shall change, harmonize, and describe them accurately, and he shall make a report of such boundary adjustments to the board of county commissioners. When the board of county commissioners approves a district boundary report submitted by the county superintendent, such boundaries shall be the legal boundaries and description of the district within the county. Whenever district boundaries are clarified under this section, the county superintendent shall supply the trustees of the district with the legal descriptions of the boundaries of their district.

History: En. 75-6504 by Sec. 163, Ch. 5, L. 1971; R.C.M. 1947, 75-6504.

20-6-104. Moratorium on creation of new district. (1) Following July 1, 1993, a school district may not initiate the creation of a new elementary district under the provisions of 20-6-216 and 20-6-217 or initiate the creation of a new high school district under the provisions of 20-6-303 and 20-6-325.

(2) This section does not apply to a petition to create a new elementary or high school district that was filed prior to July 1, 1993.

History: En. Sec. 56, Ch. 633, L. 1993.

Compiler's Comments

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

Part 2
Elementary School Districts

20-6-201. Elementary district classification. (1) Each elementary district shall have a classification of:

(a) first class, if it has a population of 6,500 or more;

(b) second class, if it has a population of 1,000 or more but less than 6,500; or

(c) third class, if it has a population of less than 1,000.

(2) The population of an elementary district must be determined by the county superintendent on the basis of the best available population information for the district.

(3) The county superintendent shall establish the classification of each elementary district in the county on the basis of the population determined for the district and the district classification criteria prescribed in this section. Whenever the population of an elementary district increases or decreases requiring an adjustment of the district classification according to the criteria prescribed in this section, the county superintendent shall declare the district's classification to be changed in accordance with the determined population, except that the classification of an elementary district may not be changed more than once every 5 years.

(4) Whenever the county superintendent changes an elementary district's classification with the result that a larger number of trustees is required on the elementary board of trustees, the increased number of trustee positions must be filled in the manner provided for in 20-3-302.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973; R.C.M. 1947, 75-6503(part); amd. Sec. 2, Ch. 137, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 137 in (4), at end, substituted "in 20-3-302" for "filling trustee vacancies" and deleted former second and third sentences that read: "Such positions shall be subject to election on the next regular school election day. If the county superintendent changes an elementary district's classification with the result that a lesser number of trustees is required, the next elementary trustee positions that become vacant under any circumstances shall not be filled until the number of elementary trustee positions has been reduced to the number required by law"; and made minor changes in style.

Cross-References

Election of trustees upon change of district classification, 20-3-302, 20-3-343.

Number of trustee positions in elementary districts, 20-3-341.

20-6-202. Time limitation for boundary changes. No elementary district shall be created nor shall any elementary district boundaries be changed between the first day of January and the second Monday of August of any calendar year except when:

(1) the entire territory of a district is annexed or attached to another district;

(2) the entire territory of the portion of a joint district located in one county is annexed or attached to another district; or

(3) two or more districts are consolidated in their entirety.

History: En. 75-6505 by Sec. 164, Ch. 5, L. 1971; amd. Sec. 25, Ch. 388, L. 1975; R.C.M. 1947, 75-6505.

20-6-203. District consolidation. Any two or more elementary districts in one county may consolidate to organize an elementary district. The consolidation shall be conducted under the following procedure:

(1) At the time the consolidation proposition is first considered, the districts involved shall jointly determine whether the consolidation shall be made with or without the mutual assumption of the bonded indebtedness of each district by all districts included in the consolidation proposition.

(2) A consolidation proposition may be introduced, individually, in each of the districts by either of the two following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider a consolidation proposition involving their district; or

(b) not less than 20% of the electors of an elementary district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent requesting an election to consider a consolidation proposition involving their resident district.

(3) When the county superintendent has received a resolution or a valid petition from each of the districts included in the consolidation proposition, he shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each elementary district included in the consolidation proposition to call a consolidation election.

(4) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections. In addition:

(a) if the districts to be consolidated are to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election also shall follow the procedures prescribed in 20-6-206; or

(b) if the districts to be consolidated are not to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election also shall follow the procedures prescribed in 20-6-207.

(5) After the county superintendent has received the election certification under the provisions of 20-20-416 from the trustees of each district included in a consolidation proposition, he shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, he shall, within 10 days after the receipt of the last election certificate, order the consolidation of such districts. If it be for consolidation with the mutual assumption of bonded indebtedness of each elementary district by all districts included in the consolidation order, such order shall specify that all the taxable real and personal property of the consolidated district shall assume the bonded indebtedness of each district. In addition, such order shall specify the number of the consolidated elementary district and shall contain the county superintendent's appointment of the

trustees for the consolidated district who shall serve until a successor is elected at the next succeeding regular school election and qualified. The superintendent shall send a copy of such order to the board of county commissioners and to the trustees of each district incorporated in the consolidation order.

(6) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts shall fail, and the county superintendent shall notify each district of the disapproval of the consolidation proposition.

History: En. 75-6506 by Sec. 165, Ch. 5, L. 1971; R.C.M. 1947, 75-6506.

Cross-References

Mail ballot elections prohibited, 13-19-104.

Election of district trustees following consolidation, 20-3-302.

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

Conditions under which school election called, 20-20-201.

20-6-204. Conditions for elementary district annexation. (1) An elementary district may be annexed to another elementary district located in the same county when:

(a) a third-class district where a high school is not located is annexed to a third-class district where a high school is located, a first-class district, or a second-class district;

(b) a third-class district where a high school is located is annexed to a first-class district or a second-class district; or

(c) a second-class district is annexed to a first-class district.

(2) The annexation of elementary districts shall be conducted under the provisions of 20-6-205.

History: En. 75-6507 by Sec. 166, Ch. 5, L. 1971; R.C.M. 1947, 75-6507.

20-6-205. Elementary district annexation. An elementary district may be annexed to another elementary district located in the same county when one of the conditions of 20-6-204 is met in accordance with the following procedure:

(1) At the time the annexation proposition is first considered, the districts involved shall jointly determine whether the annexation shall be made with or without the joint assumption of the bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(2) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider an annexation proposition for their district; or

(b) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent requesting an election to consider an annexation proposition for their district.

(3) Before ordering an election on the proposition, the county superintendent shall first receive from the trustees of the annexing district a resolution giving him the authority to annex such district.

(4) When the county superintendent has received authorization from the annexing district, he shall, within 10 days after the receipt of the resolution

or a valid petition from the district to be annexed and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) The district shall call and conduct an election in the manner prescribed in this title for school elections. In addition:

(a) if the district to be annexed is to jointly assume with the annexing district the bonded indebtedness of the annexing district, the annexation election shall also follow the procedures prescribed in 20-6-206; or

(b) if the district to be annexed is not to jointly assume with the annexing district the bonded indebtedness of the annexing district, the annexation election shall also follow the procedures prescribed in 20-6-207.

(6) After the county superintendent has received the election certificate from the trustees of the district conducting the annexation election under the provisions of 20-20-416 and if the annexation proposition has been approved by such election, he shall order the annexation of the territory of the elementary district voting on such proposition to the elementary district that has authorized the annexation to its territory. Such order shall be issued within 10 days after the receipt of the election certificate and, if it be for annexation with the assumption of bonded indebtedness, shall specify that all the taxable real and personal property of the annexed territory shall jointly assume with the annexing district the existing bonded indebtedness of the annexing district. The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts involved in the annexation order.

(7) If the annexation proposition is disapproved in the district to be annexed, it shall fail and the county superintendent shall notify each district of the disapproval of the annexation proposition.

History: En. 75-6508 by Sec. 167, Ch. 5, L. 1971; amd. Sec. 6, Ch. 91, L. 1973; R.C.M. 1947, 75-6508.

Cross-References

Mail ballot elections prohibited, 13-19-104.

Trustees of district affected by boundary change, 20-3-312.

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

School elections, Title 20, ch. 20.

20-6-206. Consolidation or annexation election with assumption of bonded indebtedness. A consolidation election involving the mutual assumption of bonded indebtedness by the elementary districts to be consolidated, as prescribed in 20-6-203, or an annexation election involving the joint assumption of bonded indebtedness by the elementary district to be annexed, as prescribed in 20-6-205, shall comply with the following procedures in addition to those prescribed by this title for other school elections:

(1) In a consolidation election the ballots shall read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(2) In an annexation election the ballots shall read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(3) Any elector qualified to vote under the provisions of 20-20-301 may vote.

(4) When the trustees in each elementary district conducting an election canvass the vote under the provisions of 20-20-415, they shall decide, according to the following procedure, if the proposition has been approved:

(a) determine if a sufficient number of the qualified electors of the district have voted to validate the election and have voted to approve the election proposition in the same manner required for bond elections by 20-9-428; and

(b) when the proposition is approved under subsection (4)(a), determine the number of votes "FOR" and "AGAINST" the proposition.

(5) The proposition shall be approved in the district if a majority of those voting approve the proposition. If the proposition is disapproved under either the provisions of subsection (4)(a) or (4)(b), the proposition shall be disapproved in the district.

History: En. 75-6509 by Sec. 168, Ch. 5, L. 1971; amd. Sec. 5, Ch. 83, L. 1971; amd. Sec. 1, Ch. 155, L. 1974; R.C.M. 1947, 75-6509.

Cross-References

School elections, Title 20, ch. 20.

Schools bonds, Title 20, ch. 9, part 4.

20-6-207. Consolidation or annexation election without assumption of bonded indebtedness. (1) A consolidation election without the assumption of bonded indebtedness by the elementary districts to be consolidated, as prescribed in 20-6-203, or an annexation election without the joint assumption of bonded indebtedness by the elementary district to be annexed, as prescribed in 20-6-205, shall be conducted in the manner prescribed by this title for school elections. Any elector qualified to vote under the provisions of 20-20-301 may vote at the election.

(2) In a consolidation election the ballots shall read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness". The consolidation proposition shall be approved by a district if a majority of those voting in a district approve the proposition, otherwise it shall be disapproved.

(3) In an annexation election the ballots shall read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition shall be approved by a district if a majority of those voting approve the proposition, otherwise it shall be disapproved.

History: En. 75-6510 by Sec. 169, Ch. 5, L. 1971; R.C.M. 1947, 75-6510.

Cross-References

School elections, Title 20, ch. 20.

20-6-208. District consolidation of two or more counties to organize joint elementary district. Any two or more elementary districts located in more than one county and whose territory is contiguous may consolidate to organize a joint elementary district. When a joint district consolidation proposition is to be introduced and considered in two or more districts, the consolidation procedure for elementary district consolidation without the assumption of bonded indebtedness prescribed in 20-6-203 and

20-6-207 shall be used except that each district shall submit its resolution or petition and its election certificate to the county superintendent of its resident county, and the several county superintendents shall jointly perform the duties prescribed for the county superintendent in 20-6-203.

History: En. 75-6511 by Sec. 170, Ch. 5, L. 1971; R.C.M. 1947, 75-6511.

Cross-References

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

Proration and calculation of BASE funding program for a joint district, 20-9-305.

20-6-209. Elementary district abandonment. (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of such district to a contiguous district of the county when:

(a) a school has not been operated by a district for at least 180 days under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of days as approved by the county superintendent or the superintendent of public instruction under the provisions of 20-9-804; or

(b) there is an insufficient number of residents who are qualified electors of the district that can and will serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for 180 days or a lesser number of days than approved by the county superintendent or the superintendent of public instruction as provided under the provisions of 20-9-804 during the ensuing school fiscal year shall constitute grounds for abandonment of such district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide such notification shall not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a) above.

(3) Any abandonment under subsection (1)(a) shall become effective on July 1. Any abandonment of an elementary district under subsection (1)(b) shall become effective immediately on the date of the abandonment order.

History: En. 75-6512 by Sec. 171, Ch. 5, L. 1971; R.C.M. 1947, 75-6512; amd. Sec. 7, Ch. 288, L. 1979.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

School isolation, 20-9-302.

Purpose and establishment of nonoperating fund, 20-9-505.

Budgeting and net levy requirement for nonoperating fund, 20-9-506.

20-6-210. Joint elementary district abandonment. (1) Any joint elementary district shall be abandoned for the reasons prescribed in 20-6-209 or when the taxable value of the taxable property of the portion of the joint district that is located within any one of the counties is of so little value that the continued inclusion of such portion in the joint district is not justified. The boards of trustees designated by 20-9-151 for school budgeting purposes shall be responsible for ordering the abandonment of the joint district and shall immediately send a copy of such order to the county superintendent of each county with territory in the joint district.

(2) After the issuance or receipt of the abandonment order, each county superintendent shall attach the territory within his county to a contiguous

elementary district within his county; except when the district is abandoned because of the lack of taxable property in one county's territory of the district and a school is operated in another county's territory of the district which territory has a taxable value of $75,000 or more, the county superintendent of the county where such territory is located shall not attach it to another district. Such territory shall continue to operate as an elementary district within the county.

(3) Any abandonment of a joint elementary district shall become effective on the date of the abandonment order except that district abandonments under the provisions of 20-6-209(1)(a) shall become effective on July 1.

History: En. 75-6513 by Sec. 172, Ch. 5, L. 1971; amd. Sec. 4, Ch. 277, L. 1977; R.C.M. 1947, 75-6513.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

School isolation, 20-9-302.

20-6-211. Joint elementary district dissolution. (1) Any joint elementary district may be dissolved. A proposition to dissolve a joint elementary district shall be introduced by a petition signed by a majority of the electors, qualified under the provisions of 20-20-301, who reside in the territory of the joint district that is located within one county. Such petition shall be addressed and presented to the county superintendent of the county of residence of the petitioners.

(2) Whenever a county superintendent receives a valid petition for the dissolution of a joint elementary district, he shall immediately notify the county superintendents of all the other counties with territory located in the joint district. The county superintendents jointly shall, within 10 days after the receipt of the petition and as provided by 20-20-201, order the trustees of the joint district to call an election. The trustees shall call and conduct, at the same time, separate elections in each portion of the joint district that is located in a separate county. Such elections shall be called and conducted in the manner prescribed in this title for school elections and shall be considered as if each were an election in a separate district. An elector who may vote at a joint district dissolution election shall be qualified to vote under the provisions of 20-20-301. The election judges for each separate election in the joint district shall send the election certificate to the county superintendent of the county in which they serve.

(3) After the receipt of the election certificates, the county superintendents shall jointly determine the result of such election on the following basis:

(a) if a majority of all the joint district electors voting at each election conducted in the joint district are in favor of the dissolution of the joint district, the dissolution of the joint elementary district shall be approved;

(b) if two-thirds of the electors voting at one of the elections conducted in a county's portion of the joint district vote in favor of the joint district dissolution, the dissolution of that portion of such joint district may be approved if all the county superintendents involved in such dissolution proposition agree that such dissolution will not place an undue hardship on any other county's portion of the joint district and there is no good and sufficient reason why such dissolution should not be made; or

(c) if the conditions of either subsection (a) or (b) cannot be satisfied, the dissolution of the joint district shall be disapproved.

(4) The county superintendents shall jointly order the joint elementary district dissolution if the proposition is approved and, whether it has been approved or disapproved, shall jointly notify the joint district of the result. The dissolution of a joint district shall become effective on the first day of the ensuing school fiscal year.

(5) When the dissolution of a joint elementary district has been approved and ordered under subsection (3)(a) above, the county superintendent of each county shall individually order the attachment of the territory of the dissolved joint elementary district within his county to a contiguous elementary district within his county except when a school is operated in such territory, in which case the territory shall operate as a separate elementary district of the county.

(6) When the dissolution of a joint elementary district has been approved and ordered under the provisions of subsection (3)(b) above, the county superintendent of the county where the dissolved portion of the joint elementary district is located shall attach such territory to a contiguous elementary district within his county.

(7) In the event a dissolution proposition is disapproved, no subsequent joint elementary district dissolution election shall be held within 3 years thereafter.

History: En. 75-6514 by Sec. 173, Ch. 5, L. 1971; R.C.M. 1947, 75-6514.

Cross-References

Mail ballot elections prohibited, 13-19-104.

Trustees of district affected by boundary change, 20-3-312.

School elections, Title 20, ch. 20.

20-6-212. Boundary change of licensed child care institution elementary district. The boundaries of any elementary district created under the provisions of Chapter 105, Laws of 1965, shall be changed by the acquisition of any land contiguous to the district by the licensed child care institution for which such district was created. The boundaries shall be changed to include the additional acquired land in the district.

History: En. 75-6515 by Sec. 174, Ch. 5, L. 1971; R.C.M. 1947, 75-6515.

20-6-213. Transfer of territory from one elementary district to another. (1) A majority of the registered electors of an elementary district who reside in territory that is a part of an elementary district may petition the county superintendent to transfer the territory in which they reside to another elementary district if:

(a) the territory to be transferred is contiguous to the district to which it is to be attached;

(b) the territory to be transferred is not located within 3 miles, over the shortest practical route, of an operating school of the district from which it is to be detached;

(c) the transfer of the territory will not reduce the taxable value of the district to less than $100,000 unless the remaining territory of the district will contain not less than 50,000 acres of nontaxable Indian land;

(d) the board of trustees of the school district that would receive the territory has approved in writing the transfer; and

(e) the territory proposed to be transferred to another elementary district has not been included in a petition filed under this section in the previous 3 years.

(2) The petition must be addressed to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the elementary district to which it is to be transferred;

(b) state the reasons why the transfer is requested;

(c) state the number of elementary school-age children residing in the territory; and

(d) be accompanied by a $50 nonrefundable filing fee.

(3) A petition that meets the criteria specified in subsection (1) and that contains all the information required by subsection (2) is considered a valid petition. On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) file the petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices must be posted in the districts affected by the petition for the transfer of territory in the manner prescribed in this title for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.

(4) The county superintendent shall conduct the hearing as scheduled in accordance with the rules of procedure adopted by the superintendent of public instruction pursuant to 20-3-107(3), and any resident, taxpayer, or representative of the affected districts must, upon request, be heard.

(5) Within 30 days after the hearing, the county superintendent shall, after considering the testimony and exhibits presented at the hearing, issue findings of fact, conclusions of law, and an order. The county superintendent shall grant or deny the requested transfer of territory. The decision must be based on the effects that the transfer would have on those residing in the territory proposed for transfer as well as those residing in the remaining territory of the elementary district.

(6) The decision of the county superintendent is final 30 days after its date unless it is appealed to the board of county commissioners by a resident, taxpayer, or representative of the elementary districts affected by the territory transfer.

(7) The decision of the board of county commissioners, after a hearing on the matter and consideration of the record from the county superintendent's hearing, is final 30 days after its date unless prior to that time it has been contested through the filing of a valid petition to submit the question to a vote of the people in the elementary district from which the land is to be transferred. In order for a petition to be valid, the petition must be signed by 20% of the electors of the elementary district who are qualified to vote in elections for that district under 20-20-301. When a valid petition is submitted under

this subsection, the question of whether the territory must be transferred to another district must be put before the voters at the next regular school election in the affected elementary district. The results of the vote must be the final decision on the petition for transfer of territory.

(8) Whenever a petition to transfer territory from one elementary district to another elementary district creates a joint elementary district or affects the boundary of an existing joint elementary district, the petition to transfer territory must be presented to the county superintendent of the county where the territory is located. The county superintendent shall notify any other county superintendents of counties with elementary districts affected by the petition, and the duties prescribed in this section for the county superintendent and the board of county commissioners must be performed jointly by the county officials.

History: En. 75-6516 by Sec. 175, Ch. 5, L. 1971; amd. Sec. 6, Ch. 83, L. 1971; amd. Sec. 1, Ch. 256, L. 1975; R.C.M. 1947, 75-6516; amd. Sec. 1, Ch. 287, L. 1979; amd. Sec. 1, Ch. 145, L. 1991; amd. Sec. 1, Ch. 517, L. 1991.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

20-6-214. Boundary adjustments in elementary school districts. The trustees of an elementary school district may, by resolution, request a change in the boundaries between their district and an adjacent district. The resolution shall be addressed to the county superintendent of schools who, upon receiving such a resolution, shall proceed as set forth in 20-6-213.

History: En. Sec. 1, Ch. 29, L. 1974; R.C.M. 1947, 75-6516.1.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

20-6-215. Review of boundaries by county superintendent. A county superintendent of schools shall, at least once every 3 years, review the existing elementary school district boundaries in the county. This review and any recommended boundary changes shall be presented by the superintendent at a hearing conducted under 20-6-213. If the superintendent orders a boundary change after the hearing, he shall forward copies of his review and the testimony at the hearing to the board of county commissioners and the state superintendent of public instruction.

History: En. Sec. 2, Ch. 29, L. 1974; R.C.M. 1947, 75-6516.2.

20-6-216. Limitations for creation of new elementary district. A new elementary district may be created out of the territory of an existing elementary district or districts if:

(1) the taxable value of the taxable property of the territory proposed to be included in such new district is $1 million or more, except that when 50,000 acres or more of such new district are nontaxable Indian land, this limitation shall not be applicable;

(2) the taxable value of the taxable property of each existing district from which territory would be detached will be $2 million or more after the territory is detached;

(3) the ANB in any of the existing districts is not reduced to less than 15;

(4) the territory to be included in the new district shall consist only of parcels of land that are contiguous; and

(5) there is a compelling need, such as a significant increase in school-age population of the territory to be included in the new district, the extreme isolation of such population, or an emergency situation.

History: En. 75-6517 by Sec. 176, Ch. 5, L. 1971; amd. Sec. 4, Ch. 137, L. 1973; amd. Sec. 2, Ch. 256, L. 1975; R.C.M. 1947, 75-6517; amd. Sec. 1, Ch. 337, L. 1981; amd. Sec. 1, Ch. 430, L. 1981; amd. Sec. 1, Ch. 371, L. 1987.

20-6-217. Procedure for creation of new elementary district. (1) The petition requesting the creation of a new elementary district out of the territory of an elementary district or districts shall be addressed to the county superintendent and shall:

(a) describe the territory that is requested to be incorporated in the new district and the taxable value of such territory as shown by the last completed assessment roll;

(b) state the reasons why the creation of a new district is requested, in accordance with the provisions of 20-6-216(5); and

(c) be signed by the parents or guardians of not less than 10 children between the ages of 6 and 16 years who reside in the territory that would be included in the new district and who reside more than 3 miles over the shortest practical route from an operating school.

(2) When a county superintendent receives a valid petition requesting the creation of a new district, he shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of such petition that is not more than 40 days after the receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices shall be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one such notice posted in the territory to be included in the new district.

(3) The county superintendent shall conduct the hearing as scheduled unless before or at the time of the hearing he receives a protest petition signed by a majority of the electors of the proposed new district who are qualified to vote under the provisions of 20-20-301. A valid protest petition shall conclusively deny the creation of a new district. If a hearing is conducted, any resident or taxpayer of the affected districts shall be heard. If the county superintendent considers it advisable and in the best interests of the residents of the proposed new district and the residents of the remaining district, he shall grant the petitioned request and order the creation of a new elementary district with its boundaries coinciding with the boundaries defined in the petition. Otherwise, he shall, by order, deny the request. In the order creating the new district, the county superintendent shall establish the effective date for its creation and the procedures for effecting an orderly transition.

(4) Either of the county superintendent's orders may be appealed to the board of county commissioners within 30 days after the date of such order. Such appeal shall be in writing, signed by not less than three resident taxpayers, and shall state sufficient facts to show the appellants' right to appeal the order. The board of county commissioners shall call a hearing of such appeal for the first regular meeting of the commission that will allow

notice of the hearing to be given in accordance with the requirements for notice of school elections. After considering the material presented at the county superintendent's hearing and such other material as is presented at its hearing, the board of county commissioners shall render a decision on the creation of such new elementary district. Such decision shall be final.

(5) When a new elementary district is created, the county superintendent shall appoint the trustees of the new district, giving preference in his selections to any trustees who were trustees of an old district and who reside in the new district. Any trustee position vacancies that may occur in the other districts shall be filled in the manner provided for filling trustee position vacancies for such district. Any trustee appointed under the provisions of this section shall serve until a successor is elected at the next regular school election and qualified.

(6) The order of the county superintendent or, if his order is appealed, the decision of the board of county commissioners creating a new district under this section shall be null and void, and the new district shall cease to exist, if such district does not open and operate a school within 2 years after the date of such order or decision. If the new district does not satisfy this requirement, the territory shall be reincorporated in the district or districts in which it was located before the creation of such new district and the trustees shall thereafter be without capacity to act.

(7) If a petition has been filed under the provisions of this section and denied by the county superintendent, no new petition may be filed until 1 year after the final decision on the original petition.

History: En. 75-6518 by Sec. 177, Ch. 5, L. 1971; R.C.M. 1947, 75-6518; amd. Sec. 2, Ch. 430, L. 1981; amd. Sec. 2, Ch. 371, L. 1987.

Cross-References

Legislative intent to elect less than majority of trustees, 20-3-302.

Filling vacant trustee position — appointee qualification and term of office, 20-3-309.

Establishment and purpose of trustee nominating districts, 20-3-353.

Redetermination of additional trustee positions and subsequent adjustments, 20-3-354.

20-6-218. Relocation of elementary school within district. The trustees of an elementary district may relocate an elementary school that is currently operating within the district if the relocation will be more convenient for the majority of the pupils attending. The provisions of 20-6-502 relating to opening or reopening a school do not apply. The provisions of 20-6-603 apply if the new site has not been previously approved as required by 20-6-603.

History: En. Sec. 1, Ch. 281, L. 1989.

Part 3

High School Districts

20-6-301. High school district classification. The classification of a high school district shall be the same as the classification of the elementary district (20-6-201) where the high school building is located. Whenever the classification of such elementary district is changed, the classification of a high school district shall be changed accordingly and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed in 20-3-354 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions shall be filled by the appointment of the county superintendent, and such positions shall be subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances shall not be filled until the number of trustee positions has been reduced to the number required by law.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973; R.C.M. 1947, 75-6503(part).

Cross-References

Legislative intent to elect less than majority of trustees, 20-3-302.

Number of trustee positions in elementary districts, 20-3-341.

Request and determination of number of additional high school district trustee positions, 20-3-352.

20-6-302. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6519 by Sec. 178, Ch. 5, L. 1971; R.C.M. 1947, 75-6519.

20-6-303. Establishment of high school districts in a county. The trustees of a high school district located in a county which has not been divided into high school districts or become a high school district by county high school unification may request the division of the county into a high school district or districts. The request shall be sent to the county superintendent.

History: En. 75-6520 by Sec. 179, Ch. 5, L. 1971; amd. Sec. 1, Ch. 44, L. 1971; R.C.M. 1947, 75-6520.

Cross-References

County bonding for county high school not placed in high school district, 20-9-451.

20-6-304. High school boundary commission — procedure for division of county into high school districts. (1) Each county of the state of Montana shall have a high school boundary commission consisting of the board of county commissioners and the county superintendent. Whenever a county superintendent receives a resolution from the trustees of any high school district requesting the commission to divide the county into high school districts, he shall immediately notify the high school boundary commission. Such commission shall set a time, date, and place for a public hearing on the request. The hearing shall be set for a date within 60 days after the receipt of the request, and any interested person may appear and be heard on such request. The county superintendent shall send a written notice of the public hearing on a requested division to the trustees of each elementary district of the county which has territory that would be affected by the change. The county superintendent shall also give notice of such public hearing in accordance with the requirement for school election notices prescribed by school election provisions of this title. The certificate of the county superintendent filed with the high school boundary commission reciting that such notice requirements have been satisfied shall be conclusive.

(2) In considering a request to divide the county into high school districts, the high school boundary commission shall give primary consideration to the convenience of the high school pupils of the territory under consideration. Such commission also shall consider the grouping of elementary districts to

be encompassed by a high school district or districts and shall group contiguous elementary districts within a high school district unless obstacles of travel, such as mountains, rivers, impractical routes of travel, or distance, make such grouping impractical. After the hearing, the high school boundary commission shall order the division of the county into high school districts whenever requested under the provisions of 20-6-303. The commission's discretion shall extend only to the establishing of boundaries for the newly created high school district or districts.

History: En. 75-6521 by Sec. 180, Ch. 5, L. 1971; R.C.M. 1947, 75-6521; amd. Sec. 9, Ch. 617, L. 1983.

Cross-References

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

Election notice, 20-20-204.

20-6-305. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6522 by Sec. 181, Ch. 5, L. 1971; R.C.M. 1947, 75-6522.

20-6-306. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6523 by Sec. 182, Ch. 5, L. 1971; amd. Sec. 12, Ch. 266, L. 1977; R.C.M. 1947, 75-6523.

20-6-307. High school district abandonment. Within 6 months after a high school district fails to operate an accredited high school within its boundaries for a period of 1 year, the county superintendent shall order the high school district abandoned. At least 20 days before issuing an abandonment order, the county superintendent shall notify the trustees of the high school district of the impending abandonment. When the order is issued, the county superintendent shall also order the attachment of the territory of each elementary district of the abandoned high school district to another high school district or districts of the county.

History: En. 75-6524 by Sec. 183, Ch. 5, L. 1971; R.C.M. 1947, 75-6524.

Cross-References

School fiscal year, 20-1-301.

School isolation, 20-9-302.

Purpose and establishment of nonoperating fund, 20-9-505.

Budgeting and net levy requirement for nonoperating fund, 20-9-506.

20-6-308. Limitations for organization of joint high school district. The boundaries of any high school district which encompass a county's portion of a joint elementary district where an elementary school is operated may be changed to establish a joint high school district. Such high school district boundary change shall be a transfer of all the territory located in another county's portion of the same joint elementary district. No such boundary change shall be made when:

(1) the territory transfer would reduce the taxable value of the taxable property of another high school district to less than $1 million; or

(2) a portion of the territory to be transferred is less than 3 miles from an operating accredited high school located in another high school district.

History: En. 75-6525 by Sec. 184, Ch. 5, L. 1971; amd. Sec. 3, Ch. 256, L. 1975; R.C.M. 1947, 75-6525.

20-6-309. Procedure for organization of joint high school district. The high school district boundary changes permitted under 20-6-308 shall be made according to the following procedure:

(1) A majority of the electors of a joint elementary district who are qualified to vote under the provisions of 20-20-301 and who reside in a county where the elementary school is not located may petition the county superintendent of their resident county to transfer the territory of the joint elementary district where they reside to establish a joint high school district. Such petition also shall state the reasons for requesting such a boundary change and the number of high school pupils residing in the territory.

(2) When the county superintendent receives a valid petition requesting the establishment of a joint high school district, he shall set a time, date, and place for a public hearing on the request which is not more than 40 days after the receipt of the petition. He shall give notice of such hearing in accordance with the election requirements for school election notices prescribed by school election provisions of this title. The county superintendent shall also notify the county superintendent of the county where the high school is located and the trustees of the high school district.

(3) The county superintendent shall hear the request to change the high school district boundaries at the place, time, and date set for the hearing, and any interested person may appear and be heard on the request. If the county superintendent deems it advisable and in the best interests of the residents of the territory to be transferred, he shall grant the petitioned request and order the change of high school boundaries to establish a joint high school district. Otherwise, he shall, by order, deny the request.

(4) If the county superintendent orders the establishment of a joint high school district, he shall immediately send the order to the county superintendent of the county where the high school is located. If the county superintendent of such county approves the order, he shall send such order to the trustees of the high school district. If the trustees approve the order, the boundary change shall become effective. Without the approval of such county superintendent and trustees, the boundary change shall fail.

(5) At any time within 30 days after the date of the county superintendent's order to grant or deny the request to establish a joint high school district, an appeal may be made to the board of county commissioners of the county in which the petition originated. The board of county commissioners shall conduct a hearing for the appeal, and their decision shall be final, subject to the approvals required by subsection (4).

History: En. 75-6526 by Sec. 185, Ch. 5, L. 1971; R.C.M. 1947, 75-6526.

Cross-References

Rules for determining residence, 1-1-215.

Proration and calculation of BASE funding program for a joint district, 20-9-305.

Election notice, 20-20-204.

20-6-310. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6527 by Sec. 186, Ch. 5, L. 1971; R.C.M. 1947, 75-6527.

20-6-311. High school district boundary approval by superintendent. Whenever a high school boundary commission orders a division of the county into high school districts under 20-6-304, its order shall not be final until it has been approved by the superintendent of public instruction. The superintendent of public instruction shall not approve any high school boundary commission order that:

(1) is dated less than 1 year since the last high school boundary commission order was approved for such county; or

(2) has not been confirmed by the high school boundary commission of each county affected by the boundary change when it involves a joint high school district.

History: En. 75-6528 by Sec. 187, Ch. 5, L. 1971; R.C.M. 1947, 75-6528; amd. Sec. 10, Ch. 617, L. 1983.

20-6-312. County high school unification. (1) Any county high school may be unified with the elementary district where the county high school building is located to establish a unified school system under a unified board of trustees. If the county has not been divided into high school districts, a high school district with boundaries coterminous with the county boundaries shall be created, except that such high school district shall not include the territory of any existing joint high school district located in the county. The territory of an existing joint high school district shall remain a part of such joint high school district. The creation of high school districts under this provision shall be in lieu of the high school district division provisions of 20-6-303.

(2) A proposition to unify a county high school with the elementary district where the county high school building is located shall be introduced whenever:

(a) the trustees of the county high school and the trustees of the elementary district individually pass resolutions requesting the county superintendent to order an election to consider a unification proposition; or

(b) not less than 20% of the electors of the county or, if the county has been divided into high school districts, the electors of the high school district where the county high school is located, and who are qualified to vote under the provisions of 20-20-301, petition the county superintendent to order an election to consider a unification proposition.

(3) When the county superintendent has received the trustees' resolutions or a valid petition, he shall, within 10 days after the receipt of the last resolution or petition and under the provisions of 20-20-201, order the county high school to call an election to consider a unification proposition. The trustees of the county high school shall call and conduct an election in the manner prescribed in this title for school elections. An elector who may vote on the unification proposition shall be qualified to vote under the provisions of 20-20-301. The ballot for a county high school unification proposition shall be substantially in the following form:

"OFFICIAL BALLOT
COUNTY HIGH SCHOOL UNIFICATION
ELECTION

Shall .... County High School be unified with District No. ...., ... County to establish a unified school system under a unified board of trustees?

☐ FOR the unification of the county high school.

☐ AGAINST the unification of the county high school."

(4) When the county superintendent receives the election certificate from the trustees of the county high school, he shall issue an order declaring the

unification of the county high school with the elementary district identified on the ballot as of the next succeeding July 1, if a majority of those electors voting at such election have voted for the unification proposition.

(5) If a majority of those electors voting at the election have voted against the unification proposition, he shall order the disapproval of the unification proposition.

History: **En. 75-6538 by Sec. 197, Ch. 5, L. 1971; R.C.M. 1947, 75-6538.**

Cross-References

Mail ballot elections prohibited, 13-19-104.

School elections, Title 20, ch. 20.

20-6-313. Transactions after approved county high school unification. (1) Whenever a county high school is unified with the elementary district where the county high school building is located, the following transactions shall be completed on or before the July 1 when the unification becomes effective:

(a) The high school boundary commission, without the approval of the superintendent of public instruction, shall order the creation of a high school district if the county has not already been divided into high school districts.

(b) The county high school trustees, who shall not have the capacity to govern the high school district upon unification, shall surrender all minutes, documents, and other records of the county high school to the trustees of the high school district.

(c) The county superintendent shall order the establishment of additional high school trustee nominating areas in the manner prescribed in 20-3-352 and 20-3-353, if requested to do so by a majority of the outlying elementary districts located in the high school district. When the county superintendent establishes such areas, he shall appoint additional high school district trustees from each area who shall hold office until a successor is elected at the next regular school election and qualified.

(d) The county treasurer, after allowing for any outstanding or registered warrants, shall transfer all end-of-the-year fund cash balances of the county high school to similar funds established for the high school district. All previous years' taxes levied and collected for the county high school shall be credited to the appropriate fund of the high school district.

(e) The board of county commissioners shall execute, in the name of the county, all necessary and appropriate deeds, bills of sale, and other instruments for the conveyance of title to all real and personal property of the county high school, including all appurtenances and hereditaments, to the high school district.

(2) All county high school bonds outstanding at the time of unification shall remain the obligation of the county or that portion of the county against which the bonds were originally issued. The high school district shall be responsible for the maintenance of the debt service fund for such bonds. It shall be the duty of the board of county commissioners and the trustees of the high school district to perform the duties prescribed in the school budgeting and bond redemption provisions of this title for the redemption and interest payments of the county high school bonds in the same manner and by the same means as though the county high school had not been unified.

History: **En. 75-6539 by Sec. 198, Ch. 5, L. 1971; R.C.M. 1947, 75-6539.**

Cross-References

Trustees of district affected by boundary change, 20-3-312.

Payment of county bonds, 20-9-455.

20-6-314. Time limitations for boundary changes. No high school district may be created and no high school district boundary may be changed between the first day of March and the second Monday of August of any calendar year except when:

(1) the entire territory of a high school district is annexed or attached to another high school district;

(2) the entire territory or portion of a joint high school district located in one county is annexed or attached to another high school district; or

(3) two or more districts are consolidated in their entirety.

History: En. Sec. 1, Ch. 617, L. 1983.

20-6-315. District consolidation. Any two or more high school districts in one county may consolidate to organize a high school district. The consolidation must be conducted under the following procedure:

(1) At the time the consolidation proposition is first considered, the districts involved shall jointly determine whether the consolidation is to be made with or without the mutual assumption of the bonded indebtedness of each district by all districts included in the consolidation proposition.

(2) A consolidation proposition may be introduced, individually, in each of the districts by either of the following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider a consolidation proposition involving their district; or

(b) not less than 20% of the electors of a high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent requesting an election to consider a consolidation proposition involving their district.

(3) When the county superintendent receives a resolution or a valid petition from each of the districts included in the consolidation proposition, he shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each high school district included in the consolidation proposition to call a consolidation election.

(4) (a) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections.

(b) In addition:

(i) if the districts to be consolidated are to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election must also follow the procedures prescribed in 20-6-318; or

(ii) if the districts to be consolidated are not to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election must also follow the procedures prescribed in 20-6-207.

(5) After the county superintendent receives the election certificate provided for in 20-20-416 from the trustees of each district included in a consolidation proposition, he shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, he shall, within 10 days after the receipt of the election

certificate, order the consolidation of such districts. If the order is for consolidation with the mutual assumption of bonded indebtedness of each high school district by all districts included in the consolidation order, the order shall specify that all taxable real and personal property of the consolidated district shall assume the bonded indebtedness of each district. In addition, the order shall specify the number of the consolidated high school district. The superintendent shall send a copy of the order to the board of county commissioners and to the trustees of each district incorporated in the consolidation order.

(6) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts fails and the county superintendent shall notify each district of the disapproval of the consolidation proposition.

History: En. Sec. 2, Ch. 617, L. 1983.

Cross-References

Election of district trustees following consolidation, 20-3-302.

Number of trustees and nominating districts, 20-3-351 through 20-3-356.

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

Conditions under which school elections called, 20-20-201.

20-6-316. Conditions for high school district annexation. (1) A high school district may be annexed to another high school district located in the same county when:

(a) a third-class district is annexed to a first-class district or a second-class district; or

(b) a second-class district is annexed to a first-class district.

(2) The annexation of high school districts must be conducted under the provisions of 20-6-317.

History: En. Sec. 3, Ch. 617, L. 1983.

20-6-317. High school district annexation procedure. A high school district may be annexed to another high school district located in the same county when one of the conditions of 20-6-316 is met in accordance with the following procedure:

(1) At the time the annexation proposition is first considered, the districts involved shall jointly determine whether the annexation is to be made with or without the joint assumption of the bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(2) An annexation proposition may be introduced in the district to be annexed by either of the following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider an annexation proposition for their district; or

(b) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent requesting an election to consider an annexation proposition for their district.

(3) Before ordering an election on the proposition, the county superintendent must receive from the trustees of the annexing district a resolution giving him the authority to annex such district.

(4) When the county superintendent receives authorization from the annexing district, he shall, within 10 days after the receipt of the resolution or a valid petition from the district to be annexed and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) (a) The district shall call and conduct an election in the manner prescribed in this title for school elections.

(b) In addition:

(i) if the district to be annexed is to jointly assume with the annexing district the bonded indebtedness of the annexing district, the annexation election must also follow the procedures prescribed in 20-6-318; or

(ii) if the district to be annexed is not to jointly assume with the annexing district the bonded indebtedness of the annexing district, the annexation election must also follow the procedures prescribed in 20-6-319.

(6) After the county superintendent receives the election certificate provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by such election, he shall order the annexation of the territory of the high school district voting on such proposition to the high school district that has authorized the annexation to its territory. The order must be issued within 10 days after the receipt of the election certificate and, if it is for annexation with the assumption of bonded indebtedness, must specify that all the taxable real and personal property of the annexed territory shall jointly assume with the annexing district the existing bonded indebtedness of the annexing district. The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts involved in the annexation order.

(7) If the annexation proposition is disapproved in the district to be annexed, it fails and the county superintendent shall notify each district of the disapproval of the annexation proposition.

History: En. Sec. 4, Ch. 617, L. 1983.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

School elections, Title 20, ch. 20.

20-6-318. Consolidation or annexation election with assumption of bonded indebtedness. A consolidation election involving the mutual assumption of bonded indebtedness by the high school districts to be consolidated as prescribed in 20-6-315 or an annexation election involving the joint assumption of bonded indebtedness by the high school districts to be annexed as prescribed in 20-6-317 must comply with the following procedures in addition to those prescribed by this title for other school elections:

(1) In a consolidation election the ballots must read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(2) In an annexation election the ballots must read, after stating the annexation proposition, "FOR annexation with assumption of bonded indeb-

tedness" and "AGAINST annexation with assumption of bonded indebtedness".

(3) Any elector qualified to vote under the provisions of 20-20-301 may vote.

(4) When the trustees in each high school district conducting an election canvass the vote under the provisions of 20-20-415, they shall decide according to the following procedure if the proposition has been approved:

(a) determine if a sufficient number of the qualified electors of the district voted to validate the election and voted to approve the election proposition in the manner required for bond elections by 20-9-428; and

(b) if the proposition is approved under subsection (4)(a), determine the number of votes "FOR" and "AGAINST" the proposition.

(5) If the proposition is disapproved under the provisions of subsection (4)(a), the proposition is disapproved in the district.

History: En. Sec. 5, Ch. 617, L. 1983.

Cross-References

School bonds, Title 20, ch. 9, part 4.

School elections, Title 20, ch. 20.

20-6-319. Consolidation or annexation election without assumption of bonded indebtedness. (1) A consolidation election without the assumption of bonded indebtedness by the high school districts to be consolidated as prescribed in 20-6-315 or an annexation election without the joint assumption of bonded indebtedness by the high school district to be annexed as prescribed in 20-6-317 must be conducted in the manner prescribed by this title for school elections. Any elector qualified to vote under the provisions of 20-20-301 may vote at the election.

(2) In a consolidation election the ballots must read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness". The consolidation proposition is approved by a district if a majority of those voting in a district approve the proposition; otherwise, it is disapproved.

(3) In an annexation election the ballots must read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting approve the proposition; otherwise, it is disapproved.

History: En. Sec. 6, Ch. 617, L. 1983.

Cross-References

School elections, Title 20, ch. 20.

20-6-320. Transfer of territory from one high school district to another. (1) A majority of registered electors of a high school district who reside in territory that is a part of a high school district may petition the county superintendent to transfer the territory in which they reside to another high school district if:

(a) the territory to be transferred is contiguous to the high school district to which it is to be attached;

(b) the territory to be transferred is not located within 3 miles, over the shortest practical route, of an operating school of the high school district from which it is to be detached;

(c) the transfer of the territory will not reduce the taxable value of the district to less than $300,000 unless the remaining territory of the high school district contains not less than 50,000 acres of nontaxable Indian land;

(d) the board of trustees of the school district that would receive the territory has approved in writing the transfer; and

(e) the territory proposed to be transferred to another high school district has not been included in a petition filed under this section in the previous 3 years.

(2) The petition must be addressed to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the high school district to which it is to be transferred;

(b) state the reasons why the transfer is requested;

(c) state the number of high-school-age children residing in the territory; and

(d) be accompanied by a $50 nonrefundable filing fee.

(3) A petition that meets the criteria specified in subsection (1) and that contains all the information required by subsection (2) is a valid petition. On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) present the petition to the board of county commissioners for certification that the criteria set forth in subsection (1) have been met. The board shall, within 10 days of receiving the petition, return it to the county superintendent with certification, signed by a majority of the board, that the criteria have been met or with a notation, signed by a majority of the board, that the criteria have not been met. The board's certification is binding on the county superintendent unless the county superintendent believes that the certification is in error. A dispute between the board and the county superintendent on this issue must be decided by the superintendent of public instruction and the decision of the superintendent of public instruction on the matter is final.

(b) file the petition as certified by the board of county commissioners.

(4) If the petition is certified or adjusted on appeal to the superintendent of public instruction to meet the criteria specified in subsection (1), the county superintendent shall:

(a) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

(b) give notice of the place, date, and time of the hearing. The notices must be posted in the high school districts affected by the petition for the territory transfer in the manner prescribed in this title for school elections, with at least one notice posted in the territory to be transferred.

(5) The county superintendent shall conduct the hearing as scheduled in accordance with the rules of procedure adopted by the superintendent of public instruction pursuant to 20-3-107(3), and any resident, taxpayer, or representative of either affected high school district must be heard.

(6) Within 30 days after the hearing, the county superintendent shall, after considering the testimony and exhibits presented at the hearing, issue findings of fact, conclusions of law, and an order. The county superintendent shall grant or deny the requested transfer of territory. The decision must be based on the effects that the transfer would have on those residing in the territory proposed for transfer as well as those residing in the remaining territory of the high school district.

(7) The decision of the county superintendent is final 30 days after its date unless it is appealed pursuant to 20-3-107 to the superintendent of public instruction by a resident, taxpayer, or representative of either high school district affected by the petitioned territory transfer. The decision of the superintendent of public instruction, after consideration of the record from the county superintendent's hearing, is final 30 days after its date. The final order of the superintendent of public instruction is subject to judicial review pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4.

(8) If a petition to transfer territory from one high school district to another high school district would create a joint high school district or affect the boundary of any existing joint high school district, the petition must be presented to the county superintendent of the county where the territory proposed for transfer is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly by such county officials.

History: En. Sec. 7, Ch. 617, L. 1983; amd. Sec. 1, Ch. 299, L. 1987; amd. Sec. 2, Ch. 517, L. 1991.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

20-6-321. High school district consolidation of districts in two or more counties. Any two or more high school districts located in two or more counties and whose territory is contiguous may consolidate to organize a joint high school district. Whenever a joint district consolidation is considered by two or more districts, the procedure for consolidation without the assumption of bonded indebtedness prescribed in 20-6-315 and 20-6-319 must be used, except that each district shall submit its resolution or petition and its election certificate to the county superintendent of its resident county and the several county superintendents shall jointly perform the duties prescribed for the county superintendent in 20-6-315.

History: En. Sec. 8, Ch. 617, L. 1983; amd. Sec. 2, Ch. 15, L. 1985.

Cross-References

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

Proration and calculation of BASE funding program for joint district, 20-9-305.

20-6-322 through 20-6-324 reserved.

20-6-325. Procedure for creation of new high school district out of existing districts — limitation for creation. (1) To create a new high school district, a petition requesting the creation of a new high school district out of the territory of an existing high school district or districts must be addressed to the county superintendent and must:

(a) describe the territory that is requested to be incorporated in the new district and the taxable value of such territory as shown by the last completed assessment roll;

(b) state the reasons why the creation of a new district is requested; and

(c) be signed by the parents or guardians of not less than 50 children who are at least 14 years old but less than 18 years old and who reside in the territory that would be included in the new district and who reside more than 20 miles over the shortest practical route from an operating high school.

(2) When a county superintendent receives a valid petition requesting the creation of a new district, he shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after the receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. Notices must be posted in the high school districts affected by the request in the manner prescribed in 20-20-204 for school elections, with at least one such notice posted in the territory to be included in the new district.

(3) The county superintendent shall conduct the hearing as scheduled unless before or at the time of the hearing he receives a protest petition signed by a majority of the electors of the proposed new district who are qualified to vote under the provisions of 20-20-301. A valid protest petition conclusively denies the creation of a new district. If a hearing is conducted, any resident or taxpayer of the affected districts must be heard. If the county superintendent considers it advisable and in the best interests of the residents of the proposed new district, he shall grant the petitioned request and order the creation of a new district with its boundaries coinciding with the boundaries defined in the petition. Otherwise, he shall by order deny the request. In the order creating the new district, the effective date for its creation must be the following July 1.

(4) The county superintendent's order may be appealed to the superintendent of public instruction within 30 days after the date of such order. An appeal must be in writing and be signed by not less than 10 residents of the proposed new district. The superintendent of public instruction shall:

(a) call a hearing on the appeal not less than 20 days or more than 30 days from receipt of the appeal;

(b) provide notice of the hearing in the manner prescribed in subsection (2)(c);

(c) consider the material presented at the county superintendent's hearing and pertinent other material; and

(d) render a decision on the creation of such new high school district. The decision is final.

(5) When a new high school district is created, the trustees of the elementary district in which the high school buildings are located are the trustees of the new district. A trustee appointed under the provisions of this section shall serve until a successor is elected at the next regular school election and is qualified.

(6) If the district does not open and operate a school within 2 years after the effective date of the creation of the new district, the order of the county

superintendent or, if his order is appealed, the decision of the superintendent of public instruction creating a new district under this section is void and the new district ceases to exist. If the new district does not satisfy this requirement, the territory must be reincorporated in the district or districts in which it was located before the creation of the new district and the trustees are without capacity to act.

(7) If a petition has been filed under the provisions of this section and denied by the county superintendent, no new petition may be filed until 1 year after the final decision on the original petition.

(8) For the purposes of this section, the taxable value of the taxable property of the territory proposed to be included in the new district must be at least $1 million, unless 50,000 acres or more of such proposed new district are nontaxable Indian land, and the taxable value of the taxable property of each existing district from which territory would be detached must be at least $2 million after the territory is detached.

History: En. Sec. 1, Ch. 585, L. 1985; amd. Sec. 1, Ch. 226, L. 1987; amd. Sec. 3, Ch. 371, L. 1987.

Part 4

School District Reorganization

20-6-401. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Component districts" means the elementary or high school districts incorporated into the enlarged district.

(2) "Eligible pupils" means the average number belonging (ANB) in the operating schools of the component districts and the tuition pupils residing in the component districts and attending another district's school under the tuition provisions of the school laws, except that the pupils residing in the component district having the largest total number of pupils are ineligible for bonus payment consideration.

(3) "Enlarged district" means the elementary or high school district resulting from the consolidation or annexation of two or more component districts.

(4) "General bonus payment" for first- and second-class school districts must be $450 per eligible pupil per year for a period of 3 years and must be deposited in the enlarged district's general fund. General bonus payment for third-class school districts must be $750 per eligible pupil per year for a period of 3 years and must be deposited in the enlarged district's general fund. The general bonus payment must be made from the state school equalization aid account.

(5) "Transportation bonus payment" is the provision of 66 2/3% state financing of the on-schedule transportation amount as provided by the transportation provisions of the school laws. When an eligible pupil is entitled to transportation, the enlarged district is entitled to the transportation bonus payment for the eligible pupil for a period of 3 years. The payment must be made from the state transportation aid account. When the eligible pupil rides a bus providing transportation for ineligible pupils, the 66 2/3% state financ-

ing of the on-schedule amount for this payment must be prorated to provide financing for the eligible pupil.

History: En. Sec. 2, Ch. 125, L. 1971; R.C.M. 1947, 75-6541; amd. Sec. 1, Ch. 205, L. 1981; amd. Sec. 1, Ch. 185, L. 1985; amd. Sec. 4, Ch. 337, L. 1989; amd. Sec. 13, Ch. 11, Sp. L. June 1989.

Cross-References

State transportation reimbursement, 20-10-145.

20-6-402. Voluntary consolidation and annexation incentive plan. Sections 20-6-401 through 20-6-408 shall be known as the voluntary consolidation and annexation incentive plan. The purpose of this plan is to provide additional financial assistance to school districts that consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208 for elementary school districts or 20-6-315 or 20-6-317 for high school districts.

History: En. Sec. 1, Ch. 125, L. 1971; R.C.M. 1947, 75-6540; amd. Sec. 11, Ch. 617, L. 1983.

20-6-403. Application for bonus payment. Whenever two or more elementary school districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208 or two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317, the enlarged district may make application for the bonus payment as provided herein if such consolidation or annexation shall result in the dissolution of at least one elementary or high school district. Application for the bonus payments must be made during the school year of the order creating the enlarged school district.

History: En. Sec. 3, Ch. 125, L. 1971; R.C.M. 1947, 75-6542; amd. Sec. 12, Ch. 617, L. 1983.

20-6-404. Application to superintendent of public instruction. Application for the bonus payments shall be made to the superintendent of public instruction and shall include a copy of the order issued by the proper officials creating such enlarged school district, the number of eligible pupils as defined herein, and any other information the superintendent of public instruction may deem necessary.

History: En. Sec. 4, Ch. 125, L. 1971; R.C.M. 1947, 75-6543.

20-6-405. Approval or disapproval of application. The superintendent of public instruction shall approve only those applications which demonstrate compliance with the requirements of this plan. When an application is approved, the superintendent of public instruction shall determine the number of eligible pupils for the bonus payments. He shall notify the enlarged district's board of trustees and the county superintendent(s) of the disapproval of the application or of the approval of the application establishing the number of eligible pupils.

History: En. Sec. 5, Ch. 125, L. 1971; R.C.M. 1947, 75-6544.

20-6-406. Disbursal and deposit of bonus payments. On or before June 30 of the next 3 consecutive years following the year of application, the superintendent of public instruction shall disburse the bonus payments for approved applications to the enlarged school district, and such disbursement is statutorily appropriated as provided in 17-7-502. The general bonus payment shall be deposited by the county treasurer in the enlarged district's general fund, and the transportation bonus payment shall be deposited by the county treasurer in the transportation fund. These bonus payments shall not be considered as a part of the regular state equalization aid or state transportation aid received by the enlarged district.

History: En. Sec. 6, Ch. 125, L. 1971; R.C.M. 1947, 75-6545; amd. Sec. 30, Ch. 703, L. 1985.

20-6-407. Effect on plan of reduction in territory. Any reduction in the amount of territory encompassed in the enlarged school district's territory during the 3-year period of bonus payments shall establish an ineligibility of the enlarged district to receive any remaining bonus payments under this plan.

History: En. Sec. 7, Ch. 125, L. 1971; R.C.M. 1947, 75-6546.

20-6-408. Effect of addition of component districts. The subsequent addition of other component districts to the enlarged district shall entitle such enlarged district to additional bonus payments under the provisions of this plan.

History: En. Sec. 8, Ch. 125, L. 1971; R.C.M. 1947, 75-6547.

20-6-409 reserved.

20-6-410. Tenure protected — hiring preference for employees. (1) Whenever two or more school districts consolidate or join through annexation to organize into a single district in the manner provided for in Title 20, chapter 6, a principal, teacher, or other certified employee of the school districts who has a right of tenure under Montana law must be given absolute preference in hiring for the first school fiscal year for any vacant position with the consolidated or enlarged district for which the employee is qualified with the required certification endorsements. Upon acceptance of a position, the certified employee continues to have tenure in the consolidated or enlarged district and the board of trustees of the consolidated or enlarged school district in which the person will perform duties shall recognize and give effect to the right of tenure.

(2) A noncertified, nonprobationary employee of a school district that consolidates or joins another district through annexation must be given preference in hiring for the first school fiscal year for any vacant position with the consolidated or enlarged district for which the employee has substantially equal qualifications and, upon acceptance of a position, may not be given probationary status.

History: En. Sec. 1, Ch. 497, L. 1991.

20-6-411. Bonded indebtedness to remain with original territory except when assumed by election. Whenever district boundaries are changed in any manner prescribed in this title, the existing bonded indebtedness against any district or territory affected by a change of boundaries shall remain the indebtedness of the original territory against which such bonds were issued and shall be paid by levies on the original territory, except when elementary districts are consolidated with the mutual assumption of bonded indebtedness or when an elementary district is annexed with a joint assumption of the annexing district's bonded indebtedness with the annexing district. Any moneys to the credit of the debt service fund of a district when its boundaries are changed shall be used to pay the existing bond principal and interest of the original territory issuing such bonds as it becomes due or for bond redemption under the bonding provisions of this title.

History: En. 75-6529 by Sec. 188, Ch. 5, L. 1971; R.C.M. 1947, 75-6529.

Cross-References

Redemption of bonds — investment of debt service fund money, 20-9-441.

20-6-412. Property tax valuation after district boundary change. The property tax valuation used under the provisions of 20-9-142 for the purposes of fixing the tax levies, except the debt service fund tax levy, for a district that has had a boundary change at any time before the fourth Monday in August shall include the property tax valuation of any territory added to the district by such boundary change or exclude the property tax valuation of any territory detached from the district by such boundary change.

History: En. 75-6530 by Sec. 189, Ch. 5, L. 1971; R.C.M. 1947, 75-6530; amd. Sec. 4, Ch. 133, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 133 near middle substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

20-6-413. Cash disposition when district ceases to exist — special levy for tuition debt. Whenever a district shall cease to exist in any manner prescribed in this title, except when districts are consolidated, the cash on hand to the credit of the funds of the district and the debts of such district shall be allocated in the following manner:

(1) Any cash to the credit of the district shall be used to pay any debts of the district, including bonded indebtedness, except that any cash available in the debt service fund shall be used first to pay bond interest and all outstanding bonds.

(2) If any cash remains to the credit of the district after paying its debts, the cash shall be transferred by the county treasurer to the credit of the district or districts assuming its territory. When the territory is assumed by more than one district, the remaining cash shall be prorated between the districts on the basis of the number of children attending school and residing within the territory assumed by each district as determined by the county superintendent.

(3) If any tuition debt remains as an obligation of the district, the tuition debt shall be the obligation of the taxable property of the discontinued district, except when the tuition debt has been assumed by the consolidated or annexing district. The tuition debt shall be financed by a mill levy on the property of the discontinued district and paid from these proceeds by the county superintendent.

(4) If any debts, other than bonded indebtedness and tuition, remain as an obligation of the district after the cash has been utilized under the provisions of subsection (1) above, the debts shall be assigned in the same manner prescribed for the transfer of cash under subsection (2) above.

History: En. 75-6532 by Sec. 191, Ch. 5, L. 1971; amd. Sec. 5, Ch. 137, L. 1973; R.C.M. 1947, 75-6532; amd. Sec. 1, Ch. 127, L. 1989.

20-6-414. Cash disposition when districts consolidated. Whenever two or more districts are consolidated without the mutual assumption of bonded indebtedness, all cash and debts, other than cash credited to the debt service fund and debts for bonded indebtedness, shall be credited or debited to the same types of funds of the consolidated district as the funds from which they were transferred by the county treasurer. In addition, when two or more elementary districts are consolidated with the mutual assumption of bonded indebtedness, the cash credited to the debt service fund and the bonded indebtedness also shall be transferred to a similar fund of the consolidated district.

History: En. 75-6533 by Sec. 192, Ch. 5, L. 1971; R.C.M. 1947, 75-6533.

20-6-415. Cash disposition when new elementary district created. Whenever a new district is created under the provisions of 20-6-217, the end-of-the-year cash balance in each fund of each district having territory that has been placed in the new district, except the debt service fund, shall be apportioned by the county superintendent on the basis of the proportion that the number of school children residing in the new district is of the total number of school children residing in the old district before the creation of the new district. After the new district has operated a school for 1 month, the county superintendent shall order the county treasurer to transfer the cash to which the new district is entitled to the credit of the fund of the new district which corresponds with the fund from which it was transferred. The new district shall not assume any debts of the old district other than existing bonded indebtedness which remains an obligation against the taxable property of the territory included in the new district.

History: En. 75-6534 by Sec. 193, Ch. 5, L. 1971; amd. Sec. 6, Ch. 137, L. 1973; R.C.M. 1947, 75-6534.

20-6-416. No cash disposition when territory transferred. Whenever only a portion of the territory of one district is transferred to another district, all cash and debts, other than bonded indebtedness, shall be retained by the district originally realizing the cash or debt.

History: En. 75-6535 by Sec. 194, Ch. 5, L. 1971; R.C.M. 1947, 75-6535.

20-6-417. Property disposition when district boundaries changed. Whenever district boundaries are changed, title to the real and personal property of the districts involved in such boundary change shall vest in the district which encompasses the territory where such real or personal property was located at the time the legal procedure to authorize the boundary change was introduced. The disposition or utilization of such property will be in the discretion of the trustees of the district encompassing the territory of its location, as provided by law.

History: En. 75-6536 by Sec. 195, Ch. 5, L. 1971; R.C.M. 1947, 75-6536.

Cross-References

Power of trustees over property, 20-3-324, 20-6-602.

20-6-418. Surrender of records when district ceases to exist. Within 10 days after any district ceases to exist, the trustees shall surrender all minutes, documents, and other records of the district to the trustees of the district assuming its territory or, if more than one district assumes its territory, to the county superintendent.

History: En. 75-6537 by Sec. 196, Ch. 5, L. 1971; R.C.M. 1947, 75-6537.

Part 5

Opening and Closing of Schools

Part Cross-References

Power of trustees to open and close schools, 20-3-324(7).

20-6-501. Definition of various schools. As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense. The trustees of any district shall designate the grade assignments for the schools of the district, but for the purposes of this title each school shall be known as:

(1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs, or the first eight grades or their equivalents. A middle school is a school comprising the work of grades 4 through 8 or any combination thereof that has been accredited as a middle school under the provisions of 20-7-102. When an accredited junior high school or an accredited 6-year high school is operated by the district, grades 7 and 8 or their equivalents shall not be considered as elementary grades.

(2) a high school when it comprises the work of one or more grades of schoolwork or their equivalents intermediate between the elementary schools and the institutions of higher education of the state of Montana. Types of high schools shall be designated as follows:

(a) a junior high school is a school comprising the work of grades 7 through 9 or their equivalents that has been accredited as a junior high school under the provisions of 20-7-102;

(b) a senior high school is a school which comprises the work of grades 10 through 12 or their equivalents and which is operated in conjunction with a junior high school;

(c) a 6-year high school is a school comprising the work of grades 7 through 12 or their equivalents that has been accredited as a 6-year high school under the provisions of 20-7-102;

(d) a 4-year high school is a school comprising the work of grades 9 through 12 or their equivalents;

(e) a county high school is a 4-year high school operated as an agency of county government and established under the provisions of the acts of March 3, 1899, March 14, 1901, and any subsequent amendments thereto.

History: En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974; R.C.M. 1947, 75-6601(1), (2); amd. Sec. 10, Ch. 658, L. 1987.

20-6-502. Opening or reopening of elementary school. The trustees of any elementary district may open or reopen an elementary school of the district when such opening or reopening has been approved in accordance with the following procedure:

(1) The parents of at least three pupils who would attend the opened or reopened school petition the trustees of the district to open or reopen a school during the ensuing school fiscal year. Such petition shall identify the school, state the reasons for requesting the opening or reopening, and give the names of the children who would attend such school.

(2) If the trustees approve the opening or reopening of a school, they shall send the petition with a copy of their approval resolution to the county superintendent. The county superintendent shall review the petition to determine if the average number belonging (ANB) of such school would be five or more.

(3) The county superintendent shall present the petition, trustees' approval, and his findings on the probable ANB to the board of county commissioners (budget board) for their consideration. The budget board shall deny the opening or reopening of any school if the county superintendent's enrollment estimate for such school is less than five ANB. In all other cases, the budget board may approve or disapprove the requested opening or reopening of the elementary school.

(4) If the budget board approves a school opening or reopening, the county superintendent shall send a copy of such approval, along with the petition, trustees' approval, and his estimate of the probable ANB, to the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the requested opening or reopening of the elementary school. If the opening or reopening is approved, the superintendent of public instruction shall approve or adjust the ANB estimate of the county superintendent for such school and such ANB amount shall be used for budgeting and BASE funding program purposes during the ensuing school fiscal year. No ANB amount shall be approved for the ensuing school fiscal year for an opening or reopening school when the request for such school has not been received by the superintendent of public instruction before the fourth Monday of June.

History: En. 75-6602 by Sec. 200, Ch. 5, L. 1971; R.C.M. 1947, 75-6602.

Cross-References

ANB defined, 20-1-101.

Calculation of average number belonging, 20-9-311.

Circumstances under which the regular average number belonging may be increased, 20-9-313.

20-6-503. Opening or reopening of a high school. (1) The trustees of any high school district may open or reopen a high school of the district or a branch of a high school of the district when such opening or reopening has been approved by the superintendent of public instruction; except when a county high school is discontinued by a unification action, the trustees may establish, by resolution, a high school to be operated by the high school district without further action or approval. When the trustees of a high school district resolve to open or reopen a high school, they shall apply to the superintendent of public instruction for approval to open or reopen such school by June 1 before the school fiscal year in which they intend to open or reopen the high school. Such application shall state:

(a) their reasons why the high school should be opened or reopened;

(b) the probable enrollment of such high school;

(c) the distance and road conditions of the route to neighboring high schools;

(d) the taxable value of the district;

(e) the building and equipment facilities available for such high school;

(f) the planned course of instruction for such high school;

(g) the planned methods of complying with high school standards of accreditation; and

(h) any other information that may be required by the superintendent of public instruction.

(2) The superintendent of public instruction shall investigate the application for the opening or reopening of a high school and shall approve or disapprove the opening of the high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the high school district trustees may open such high school.

(3) Whenever the opening or reopening of a high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the high school. The ANB determined by the county superintendent shall be used for budgeting and BASE funding program purposes.

(4) Nothing herein contained shall be construed so as to preclude the trustees of a high school district from establishing more than one high school in the district.

History: En. 75-6603 by Sec. 201, Ch. 5, L. 1971; R.C.M. 1947, 75-6603.

Cross-References

ANB defined, 20-1-101.

School fiscal year, 20-1-301.

Calculation of average number belonging, 20-9-311.

Circumstances under which the regular average number belonging may be increased, 20-9-313.

20-6-504. Opening of a junior high school. (1) The trustees of any elementary district and the trustees of the high school district in which such elementary district is located may open a junior high school when such opening has been approved by the superintendent of public instruction; except that when the high school district operates a county high school, the opening of a junior high school shall be approved under the provisions of 20-6-505.

(2) When the trustees of such districts resolve to open a junior high school, they shall jointly apply to the superintendent of public instruction for approval to open such school by June 1 before the school fiscal year in which they intend to open the junior high school. The application shall contain such information as is required under 20-6-503 for an application to open a high school.

(3) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the trustees of the elementary district and the high school district may jointly open such school.

(4) Whenever the opening of a junior high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent shall be used for budgeting and BASE funding program purposes during the ensuing school fiscal year.

History: En. 75-6604 by Sec. 202, Ch. 5, L. 1971; R.C.M. 1947, 75-6604.

Cross-References

ANB defined, 20-1-101.

Calculation of average number belonging, 20-9-311.

Circumstances under which the regular average number belonging may be increased, 20-9-313.

20-6-505. Opening a junior high school when high school district operates a county high school. (1) Whenever the trustees of an elementary district and a high school district operating a county high school have formed a joint board of trustees under the provisions of 20-3-361, such joint board of trustees may open a junior high school under the provisions of this section.

(2) When the joint board of trustees resolves to open a junior high school, they shall order an election under the provisions of 20-20-201 to submit a proposition to the electors of the district to approve or disapprove the trustees' resolution to open a junior high school. The joint board of trustees shall call and conduct the election in the manner prescribed in this title for school elections and equally share the cost of the election. Any elector qualified to vote under the provisions of 20-20-301 may vote on the proposition. If a majority of the electors voting at the election approve the proposition, the trustees shall apply to the superintendent of public instruction for approval to open a junior high school. If a majority of the electors voting at the election disapprove the proposition, a junior high school shall not be opened by the joint board of trustees.

(3) The application to the superintendent of public instruction for the approval to open a junior high school shall be submitted by June 1 following the election approving the opening of the junior high school. The application shall contain such information as is required under 20-6-503 for an application to open a high school.

(4) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the joint board of trustees may open the junior high school.

(5) At any time the trustees of the elementary district and the trustees of the high school district shall cease to form a joint board of trustees under the provisions of 20-3-361, the junior high school shall be closed and the districts shall assume the provision of an educational program for the junior high school pupils of their respective districts.

History: En. 75-6605 by Sec. 203, Ch. 5, L. 1971; R.C.M. 1947, 75-6605.

Cross-References

Powers of joint board of trustees, 20-3-362.

Circumstances under which the regular average number belonging may be increased, 20-9-313.

School elections, Title 20, ch. 20.

20-6-506. Budgeting and cost sharing when junior high school operated by elementary district and high school district operating a county high school. (1) Whenever the opening of a junior high school is approved for the ensuing school fiscal year under 20-6-505, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent and the ANB actually realized in subsequent school fiscal years must be applied to prorate the BASE funding program amount between the elementary and high school districts. Each district shall adopt its general fund budget on the basis of the prorated amount and shall finance its proportionate share of the cost of operating the junior high school.

(2) The cost of operating the junior high school must be prorated between the elementary district and the high school district on the basis of the ratio that the number of pupils of their district is to the total enrollment of the junior high school.

History: En. 75-6606 by Sec. 204, Ch. 5, L. 1971; amd. Sec. 13, Ch. 266, L. 1977; R.C.M. 1947, 75-6606; amd. Sec. 14, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (1), in second sentence after "applied", deleted "under 20-9-320" and before "between" substituted "BASE funding program amount" for "foundation program schedule amount provided in 20-9-303(2)(a)". Amendment effective July 1, 1993.

Cross-References

ANB defined, 20-1-101.

Powers of joint board of trustees, 20-3-362.

Calculation of average number belonging, 20-9-311.

20-6-507. Opening of a middle school. The trustees of any elementary district may open a middle school when such opening has been approved by the superintendent of public instruction. The state superintendent shall investigate an application for the opening of a middle school and shall approve or disapprove the opening before the fourth Monday in June preceding the first year of intended operation. When a middle school opening is approved, the county superintendent shall estimate the ANB after investigating the probable enrollment for the middle school. The ANB so estimated shall be used for budgeting and BASE funding program purposes during the ensuing school fiscal year.

History: En. 75-6609 by Sec. 2, Ch. 352, L. 1974; R.C.M. 1947, 75-6609.

Cross-References

ANB defined, 20-1-101.

Calculation of average number belonging, 20-9-311.

20-6-508. Kindergarten through grade twelve system. Unless otherwise required by law, the trustees of an elementary district in which a high school is located and the trustees of the high school district operating such high school may organize the schools of their districts to form a kindergarten through grade 12 school system, provided that the high school and elementary trustees shall not assume responsibility for the administration of grades which are not properly within their jurisdiction.

History: En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974; R.C.M. 1947, 75-6601(3).

20-6-509. School closure. Whenever it is in the best interest of the pupils affected, the trustees of any district may close any school of the district, except that a junior high school may be closed only by joint action of the trustees of the elementary district and the high school district in which the school is located. Whenever the trustees of a district close a school of the district, they shall provide the pupils of the closed school with transportation and tuition, if required, to other schools in accordance with the provisions of this title.

History: En. 75-6607 by Sec. 205, Ch. 5, L. 1971; R.C.M. 1947, 75-6607; amd. Sec. 3, Ch. 384, L. 1979.

Cross-References

Powers of joint board of trustees, 20-3-362.

Nonoperating fund, 20-9-505, 20-9-506.

Part 6
School Property

Part Cross-References

Proscribed acts relating to contracts and claims, Title 2, ch. 2, part 2.

Sale of county property to school district, 7-8-2216.

Use of district property by home guard, 10-1-703.

School officers not to act as agents, 20-1-201.

Conflict of interest, 20-1-205.

Liability of parents for pupil's damage to property, 20-5-201, 40-6-237, 40-6-238.

Authority of Board of Public Education when school property used, 20-7-804.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

Trustees to execute all contracts, 20-9-213.

Additional levy for furnishing school facilities, 20-9-353.

Nonoperating fund for maintenance of district property, 20-9-505.

Public school fund and grants to schools, Title 20, ch. 9, part 6.

20-6-601. Power to accept gifts. All school districts are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of property, real or personal, and the right to own, hold, work, and improve the same.

History: En. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; R.C.M. 1947, 11-1006(part).

Cross-References

Authority to request, accept, and disburse money, 20-3-208.

Acceptance and expenditure of federal money for state, 20-9-603.

Gifts, legacies, devises, and administration of endowment fund, 20-9-604.

20-6-602. Trustees' power over property. The trustees of any district other than a high school district operating a county high school shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district. In the name of the county, the trustees of a high school district operating a county high school, as defined by 20-6-101, shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district.

History: En. 75-8201 by Sec. 473, Ch. 5, L. 1971; R.C.M. 1947, 75-8201.

20-6-603. Trustees' authority to acquire or dispose of sites and buildings — when election required. (1) The trustees of a district may purchase, build, exchange, or otherwise acquire, sell, or dispose of sites and buildings of the district. Action may not be taken by the trustees without the approval of the qualified electors of the district at an election called for the purpose of approval unless:

(a) a bond issue has been authorized for the purpose of constructing, purchasing, or acquiring the site or building;

(b) an additional levy under the provisions of 20-9-353 has been approved for the purpose of constructing, purchasing, or acquiring the site or building;

(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the maximum general fund budget amount for the district and, in the case of a site purchase, the site has been approved under the provisions of 20-6-621; or

(d) money is otherwise available under the provisions of this title and the ballot for the site approval for the building incorporated a description of the building to be located on the site.

(2) When an election is conducted under the provisions of this section, it must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector qualified to vote under the provisions of 20-20-301 may vote in the election. If a majority of those electors voting at the election approve the proposed action, the trustees may take the proposed action.

History: En. 75-8204 by Sec. 476, Ch. 5, L. 1971; R.C.M. 1947, 75-8204; amd. Sec. 15, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 substituted language in (1)(c) prohibiting trustees from taking action without voter approval unless cost of constructing, purchasing, or acquiring site or building is financed without exceeding maximum general fund budget amount for former (1)(c) that read: "(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the foundation program schedule amount provided in 20-9-303(2)(a), and in the case of a site purchase, the site has been approved under the provisions of 20-6-621". Amendment effective July 1, 1993.

Cross-References

Mail ballot elections prohibited, 13-19-104.

Bond issues for certain purposes, 20-9-403.

Purposes and petition for county high school bonds, 20-9-452.

Election required for expenditure of prorated county bond proceeds, 20-9-454.

Purpose and authorization of a building reserve fund by election, 20-9-502.

Budgeting, tax levy, and use of the building reserve fund, 20-9-503.

Building fund to be credited when property sold, 20-9-508.

Lease or sale of district property, 20-15-107.

School elections, Title 20, ch. 20.

20-6-604. Sale of property when resolution passed after hearing — appeal procedure. (1) Whenever the trustees of a district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district, the trustees may sell or otherwise dispose of the real or personal property in accordance with this section and without conforming to the provisions of 20-6-603. If a decision to sell or dispose of property is made, the trustees shall adopt a resolution to sell or otherwise dispose of the district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district.

(2) The resolution may not become effective for 14 days after the notice required in subsection (3) is made.

(3) The trustees shall cause notices of the resolution to be published in a newspaper of general circulation in the district. If there is no newspaper of general circulation, the trustees shall cause notices of the resolution to be posted in the manner required for school elections in 20-20-204.

(4) A taxpayer may appeal the resolution of the trustees, at any time prior to the effective date of the resolution, to the district court by filing a verified petition with the clerk of the court and serving a copy of the petition upon the district. The petition must set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition stay the resolution until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest convenient time. At the hearing, the court shall hear the matter

de novo and may take testimony as it considers necessary. Its proceedings are summary and informal, and its decision is final.

(5) The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or dispose of the real or personal property in any reasonable manner that they determine to be in the best interests of the district.

(6) The money realized from the sale or disposal of real or personal property of the district must be credited to the debt service fund, building fund, general fund, or other appropriate fund, at the discretion of the trustees.

History: En. 75-8205 by Sec. 477, Ch. 5, L. 1971; amd. Sec. 8, Ch. 91, L. 1973; R.C.M. 1947, 75-8205; amd. Sec. 1, Ch. 150, L. 1987; amd. Sec. 3, Ch. 568, L. 1991.

Cross-References

Separate debt service fund maintained by County Treasurer, 20-9-440.

Building fund to be credited when property sold, 20-9-508.

School election notice, 20-20-204.

20-6-605. Land acquired by conditional deed or at will or sufferance. Whenever, after March 17, 1939, the trustees acquire land by deed conditioned upon the use of the land for the conduct of school or related activities or whenever land has been used by the trustees at the will or sufferance of the land's owner or claimant and the district has constructed buildings or made other improvements on the land, the owner or claimant may repossess the land if it ceases to be used as specified by deed or, if not specified, for the conduct of school or related activities. However, the owner or claimant shall first notify the trustees in writing of his intent to repossess the land, and the trustees shall thereafter have 1 year to remove any buildings or improvements placed there by the district. The trustees' failure to remove the buildings or improvements within that time shall constitute a forfeiture of such buildings or improvements. Before the owner or claimant shall have the right to give notice of repossession, the district's intention to permanently cease using the land shall have been established by resolution of the trustees and vote of the district's electors.

History: En. 75-8202 by Sec. 474, Ch. 5, L. 1971; R.C.M. 1947, 75-8202.

Cross-References

Right of reentry, Title 70, ch. 16, part 4.

20-6-606. Letting contracts for school facilities. Any letting of contracts related to the construction or furnishing of a new, enlarged, remodeled, or repaired building shall be conducted under the provisions of 20-9-204.

History: En. 75-8210 by Sec. 482, Ch. 5, L. 1971; R.C.M. 1947, 75-8210.

Cross-References

Power of trustees to execute contracts, 20-9-213.

20-6-607. Leasing district property and disposition of any rentals. The trustees of any district may rent, lease, or let any buildings, land, or facilities of the district under the terms specified by the trustees. Any money collected for such rental, lease, or letting may, in the discretion of the trustees, be used for any proper school purpose and deposited in such fund as the trustees consider appropriate.

History: En. 75-8211 by Sec. 483, Ch. 5, L. 1971; amd. Sec. 2, Ch. 88, L. 1973; amd. Sec. 3, Ch. 424, L. 1977; R.C.M. 1947, 75-8211.

Cross-References

Apportionment of rents from school lands, Art. X, sec. 5, Mont. Const.

Housing and dormitory fund, 20-9-509.

Oil and gas leases, 82-10-201 through 82-10-204.

20-6-608. Authority and duty of trustees to insure district property. The trustees of any district shall insure any or all real and personal property of the district. The trustees shall include the cost of insurance in the general fund budget of the district.

History: En. 75-8212 by Sec. 484, Ch. 5, L. 1971; R.C.M. 1947, 75-8212; amd. Sec. 16, Ch. 11, Sp. L. June 1989.

Cross-References

Political subdivision tax levy to pay premiums, 2-9-212.

20-6-609. Trustees' authority to acquire property by lease-purchase agreement. The trustees of a district may acquire real and personal property by an agreement to lease with an option to purchase. If real property is acquired, the trustees shall comply with 20-6-603.

History: En. Sec. 1, Ch. 144, L. 1985.

Cross-References

Montana Procurement Act — local government adoption of provisions, 18-4-124.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

Duties of trustees — contracts, 20-9-213.

20-6-610 through 20-6-620 reserved.

20-6-621. Selection of school sites, approval election, and lease of state lands. (1) The trustees of any district shall have the authority to select the sites for school buildings or for other school purposes, but such selection shall first be approved by the qualified electors of the district before any contract for the purchase of such site is entered into by the trustees, except the trustees shall have the authority to purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. Furthermore, the trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site shall be called under the provisions of 20-20-201 and shall be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election shall be qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees shall have the authority to purchase such sites. A site approval election shall not be required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of such site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees shall:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of health and environmental sciences of the state of Montana; and

(c) comply with the statewide building regulations, if any, promulgated by the department of commerce.

(4) The board of land commissioners shall have the authority to sell, at the appraised value, or to lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than 10 acres to be used as a school site in such district.

History: En. 75-8203 by Sec. 475, Ch. 5, L. 1971; R.C.M. 1947, 75-8203; amd. Sec. 75, Ch. 575, L. 1981; amd. Sec. 1, Ch. 352, L. 1985.

Cross-References

Mail ballot elections prohibited, 13-19-104.

Lease or purchase of state property for vocational-technical center purposes, 20-16-108.

Building construction standards, Title 50, ch. 60.

Board of Land Commissioners, Title 77, ch. 1, part 2.

20-6-622. Review and approval of school building plans and specifications. (1) No school building, either publicly or privately owned or operated, in which students are housed or instructed may be built, enlarged, or remodeled until the plans and specifications for such construction have been submitted to and approved by the department of commerce or a municipality or county with a building code adopted as provided in 50-60-301.

(2) The plans and specifications required in subsection (1) shall show in detail the proposed construction of the building and shall illustrate and indicate conformity with the applicable building code.

(3) As a service to districts, the superintendent of public instruction may review the plans and specifications required in subsection (1) to assist the districts in designing facilities for optimum utilization.

History: En. 75-8206 by Sec. 478, Ch. 5, L. 1971; amd. Sec. 11, Ch. 504, L. 1977; R.C.M. 1947, 75-8206; amd. Sec. 1, Ch. 274, L. 1983; amd. Sec. 2, Ch. 352, L. 1985.

Cross-References

Building construction standards, Title 50, ch. 60.

20-6-623. Repealed. Sec. 15, Ch. 384, L. 1979.

History: En. Sec. 1, Ch. 49, L. 1973; R.C.M. 1947, 75-8206.1.

20-6-624. School building plans and specifications approval before payment. (1) The trustees of a district shall not make any payment under any contract for the construction of school facilities until the plans and specifications for such construction have been approved under the provisions of 20-6-622.

(2) Any contractor, architect, trustee, or any other person, firm, or corporation who shall violate the provisions of 20-6-622, this section, or any regulation promulgated by the state board of health and environmental sciences or the department of justice shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 or more than $500.

History: En. 75-8208 by Sec. 480, Ch. 5, L. 1971; R.C.M. 1947, 75-8208; amd. Sec. 1, Ch. 706, L. 1991.

Cross-References

Lapse of budgeted appropriations and provision for unpaid claims, 20-9-209.

Fire safety in public buildings, Title 50, ch. 61.

20-6-625. Authorization to lease buildings or land for school purposes. The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease such building or land from the county, municipality, another district, or any person. The lease may be for a term of not more than 3 years unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections, in which case the lease may be for a term of not more than 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

History: En. 75-8209 by Sec. 481, Ch. 5, L. 1971; amd. Sec. 2, Ch. 424, L. 1977; R.C.M. 1947, 75-8209.

Cross-References

School fiscal year, 20-1-301.

Lease or purchase of state property for vocational-technical center purposes, 20-16-108.

School elections, Title 20, ch. 20.

20-6-626 through 20-6-630 reserved.

20-6-631. When contracts for architectural services required. Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of a school district exceeds $50,000 and requires architectural services, such services shall be by contract.

History: En. 75-6815 by Sec. 1, Ch. 370, L. 1975; R.C.M. 1947, 75-6815.

Cross-References

Architects on public buildings to be certified, 18-2-113.

Seal and signature of architect on plans, 18-2-114.

20-6-632. Repealed. Sec. 1, Ch. 422, L. 1979.

History: En. 75-6816 by Sec. 2, Ch. 370, L. 1975; R.C.M. 1947, 75-6816.

20-6-633. Negotiation of fees. After selecting a firm, the trustees shall negotiate with the selected firm a fair and reasonable fee for the architectural services as described by the school district's scope of the work. In the event the trustees and the firm are unable to negotiate a fair and reasonable fee, the trustees may select another firm, provided the trustees again give reasonable public notice of their selection.

History: En. 75-6817 by Sec. 3, Ch. 370, L. 1975; R.C.M. 1947, 75-6817.

20-6-634. Tentative and final proposals — public meetings. Following the awarding of the contract, the trustees shall meet as often as necessary with the architectural firm to review the firm's plans and proposals. At least two of these meetings, one to review the firm's preliminary plans and one to review the firm's final proposals, shall be public meetings held after the trustees have given reasonable public notice. At these meetings the trustees shall consider any questions and testimony from the public.

History: En. 75-6818 by Sec. 4, Ch. 370, L. 1975; R.C.M. 1947, 75-6818.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

Meetings and quorum, 20-3-322.

20-6-635. Contracts with Montana firms encouraged. The trustees are encouraged but not required to award architectural contracts to firms based or operating in Montana.

History: En. 75-6819 by Sec. 5, Ch. 370, L. 1975; R.C.M. 1947, 75-6819.

20-6-636. Prohibition against contingent fees — penalty. (1) Each contract entered into by a school district for architectural services shall contain a prohibition against contingent fees as follows: "The architectural firm warrants that it has not employed or retained any company or person, other than a bona fide full-time employee, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide full-time employee, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement." Upon the breach or violation of this prohibition, the trustees shall have the right to terminate the agreement without liability and, at their discretion, to deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

(2) Any individual, corporation, partnership, firm, or company, other than a bona fide full-time employee, is prohibited from offering, agreeing, or contracting to solicit or secure school district contracts for architectural services for any other individual, company, corporation, partnership, or firm.

(3) A public official or employee is prohibited from soliciting or securing, whether for consideration or not, a contract for professional services for another.

(4) A person convicted of violating subsections (1), (2), or (3) of this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 75-6820 by Sec. 6, Ch. 370, L. 1975; R.C.M. 1947, 75-6820.

Cross-References

Proscribed acts related to contracts and claims, Title 2, ch. 2, part 2.

Conflicts of interest, letting contracts, and calling for bids, 20-9-204.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

20-6-637 through 20-6-639 reserved.

20-6-640. Long-term loans. School districts that experience a disaster that destroys school property to the extent of rendering the property unfit for its present school use may apply for long-term loans for use in replacing school property under the provisions of Title 17, chapter 5, part 16.

History: En. Sec. 1, Ch. 585, L. 1991.

Cross-References

Municipal Finance Consolidation Act, Title 17, ch. 5, part 16.

Part 7

K-12 School Districts

20-6-701. K-12 school districts required — definition — procedure for creation — exception. (1) Except as provided in subsection (4), by the school fiscal year beginning July 1, 1995, each elementary district with the same district boundaries as a high school district shall attach to the high school district for the purpose of establishing a K-12 school district.

(2) For the purposes of this title, unless the context clearly indicates otherwise, "K-12 school district" means a high school district with an elementary district that has been attached to the high school district under the

procedures provided in this section, with the high school district remaining an organized district under the provisions of 20-6-101 and other provisions of law and the elementary district becoming an inactive district under the provisions of 20-6-101.

(3) The attachment of an elementary district to a high school district to form a K-12 school district must be conducted under the following procedure:

(a) The trustees of each district shall pass a resolution requesting the county superintendent to order an attachment involving their districts.

(b) When the county superintendent receives a resolution from each of the districts, the county superintendent shall, within 10 days after receipt of the last resolution, order the attachment of the elementary district to the high school district to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the districts included in the attachment order, and the superintendent of public instruction.

(4) This section does not apply to a school district receiving Public Law 81-874 funding if creation of a K-12 district would result in the loss of Public Law 81-874 funding.

History: En. Sec. 1, Ch. 555, L. 1991; amd. Sec. 1, Ch. 194, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 194 at beginning of (1) inserted "Except as provided in subsection (4), by the school fiscal year beginning July 1, 1995" and made attachment mandatory rather than permissive; in (3)(a) substituted "The trustees of each district shall pass a resolution requesting the county superintendent to order an attachment involving their districts" for language concerning providing for passage of trustee resolutions requesting County Superintendent to order an election or allowing not less than 20% of electors of an elementary and high school district to petition for election to consider attachment proposition; in (3)(b) substituted requirement that County Superintendent order attachment of an elementary school district to a high school district within 10 days of receipt of resolution for requirement that County Superintendent within 10 days of receipt of a resolution or valid petition order district trustees to call an attachment election in conjunction with a regular school election; deleted (3)(b)(ii) that required that attachment proposition include assumption of the elementary school district's bonded indebtedness by the high school district; deleted (3)(c) that required that districts conduct attachment election in manner prescribed for school elections; deleted (3)(d) that required that County Superintendent, after receiving certificate of election from district trustees, determine if the attachment proposition has been approved by the districts and, if so, within 10 days of receipt of the certificate order attachment of the elementary school district to the high school district; and inserted (4) excluding application of this section to school districts receiving Public Law 81-874 funding if creation of K-12 district would result in loss of Public Law 81-874 funding. Amendment effective July 1, 1993.

20-6-702. Funding for K-12 school districts. (1) Notwithstanding the provisions of subsections (2) through (6), a K-12 school district formed under the provisions of 20-6-701 is subject to the provisions of law for high school districts.

(2) The number of elected trustees of the K-12 school district must be based on the classification of the attached elementary district under the provisions of 20-3-341 and 20-3-351.

(3) Calculations for the following must be made separately for the elementary school program and the high school program of a K-12 school district:

(a) the calculation of ANB for purposes of determining the total per-ANB entitlements must be in accordance with the provisions of 20-9-311;

(b) the basic county tax and revenues for the elementary BASE funding program amount for the district must be determined in accordance with the provisions of 20-9-331, and the basic special tax and revenues for the high school BASE funding program amount for the district must be determined in accordance with 20-9-333; and

(c) the guaranteed tax base aid for BASE funding program purposes for a K-12 school district must be calculated separately, using each district's guaranteed tax base ratio, as defined in 20-9-366. The BASE budget levy to be levied for the K-12 school district must be prorated based on the ratio of the BASE funding program amounts for elementary school programs to the BASE funding program amounts for high school programs.

(4) The retirement obligation and eligibility for retirement guaranteed tax base aid for a K-12 school district must be calculated and funded as a high school district retirement obligation under the provisions of 20-9-501.

(5) For the purposes of budgeting for a K-12 school district, the trustees shall adopt a single fund for any of the budgeted or nonbudgeted funds described in 20-9-201 for the costs of operating all grades and programs of the district.

(6) Tuition for attendance in the K-12 school district must be determined separately for high school pupils and for elementary pupils under the provisions of 20-5-320 through 20-5-324, except that the actual expenditures used for calculations in 20-5-323 must be based on an amount prorated between the elementary and high school programs in the appropriate funds of each district in the year prior to the attachment of the districts.

History: En. Sec. 2, Ch. 555, L. 1991; amd. Sec. 9, Ch. 563, L. 1993; amd. Sec. 10, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 563 near middle of (6) substituted "20-5-320 through 20-5-324" for "chapter 5, part 3" and substituted "20-5-323" for "20-5-305 and 20-5-312".

Chapter 633 in (3)(a) substituted "total per-ANB entitlements" for "foundation program schedule payments"; throughout (3)(b) and (3)(c) substituted "BASE funding" for "foundation"; and in (3)(c), near beginning of first sentence, substituted "BASE funding program purposes" for "the permissive levy amount" and after "using" substituted "each district's guaranteed tax base ratio" for "the mill value per elementary ANB and the mill value per high school ANB" and in second sentence substituted "BASE budget levy" for "permissive amount". Amendment effective July 1, 1993.

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-6-703. Transitions after formation of K-12 school district. (1) When an attachment order for a K-12 school district becomes effective on July 1 under the provisions of 20-6-701:

(a) the board of county commissioners shall execute all necessary and appropriate deeds, bills of sale, or other instruments for the conveyance of title to all real and personal property of the elementary district to the high school district;

(b) the trustees of the elementary district shall entrust the minutes of the board of trustees, the elementary district documents, and other records to the high school district to which it is attached; and

(c) the county treasurer shall transfer all end-of-the-year warrants and fund balances of the attached elementary district to the similar funds established for the K-12 school district in the high school district.

(2) All taxes levied by and revenue due from a previous school fiscal year to an elementary district attached to a high school district must be payable to the appropriate fund of the high school district.

(3) The previous year's general fund budget amounts for the elementary district and the high school district that form a K-12 school district must be combined to determine the budget limitation for the ensuing school fiscal year pursuant to 20-9-308.

(4) An elementary district and a high school district that form a K-12 school district under the provisions of 20-6-701 may not be considered an enlarged district for the purpose of bonus payments under 20-6-401 through 20-6-408.

History: En. Sec. 3, Ch. 555, L. 1991; amd. Sec. 49, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (3), at end, substituted "20-9-308" for "20-9-315". Amendment effective July 1, 1993.

20-6-704 through 20-6-710 reserved.

20-6-711. Tenure protected — hiring preference for noncertified employees. (1) Whenever an elementary district is attached to a high school district to form a K-12 school district under the provisions of 20-6-701, a district superintendent, principal, teacher, or other certified employee of the elementary district who has a right of tenure under Montana law continues to have tenure in the K-12 district and the board of trustees of the high school district in which the person will perform duties shall recognize and give effect to the right of tenure.

(2) A noncertified, nonprobationary employee of an elementary district that is attached to a high school district to form a K-12 district must be given preference in hiring for any position with the K-12 district for which the employee has substantially equal qualifications and, upon acceptance of a position, may not be given probationary status.

History: En. Sec. 12, Ch. 555, L. 1991.

20-6-712. Repealed. Sec. 2, Ch. 194, L. 1993.

History: En. Sec. 5, Ch. 555, L. 1991.

CHAPTER 7

SCHOOL INSTRUCTION AND SPECIAL PROGRAMS

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Chapter Cross-References

Educational goals and duties, Art. X, sec. 1, Mont. Const.

Tax checkoff for agriculture in Montana schools, 15-30-151, 15-30-152.

Part 1
Accreditation and Curriculum

20-7-101. Standards of accreditation. (1) Standards of accreditation for all schools shall be adopted by the board of public education upon the recommendations of the superintendent of public instruction.

(2) Standards for the retention of school records must be as provided in 20-1-212.

History: En. 75-7501 by Sec. 372, Ch. 5, L. 1971; R.C.M. 1947, 75-7501; amd. Sec. 2, Ch. 543, L. 1983.

20-7-102. Accreditation of schools. (1) Every school year the conditions under which each elementary school, middle school, junior high school, and high school operates shall be reviewed by the superintendent of public instruction to determine each school's compliance with the standards of accreditation. The accreditation status of every school shall then be established by the board of public education upon the recommendation of the superintendent of public instruction, and notification of such status for the applicable school year shall be given to each district.

(2) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

History: En. 75-7502 by Sec. 373, Ch. 5, L. 1971; amd. Sec. 4, Ch. 352, L. 1974; R.C.M. 1947, 75-7502; amd. Sec. 1, Ch. 270, L. 1979; amd. Sec. 1, Ch. 150, L. 1983.

Cross-References

School district assessment for placement of a child who enrolls from a nonaccredited, nonpublic school, 20-5-110.

Definitions of various schools, 20-6-501.

20-7-103 through 20-7-110 reserved.

20-7-111. Instruction in public schools. The board of public education shall define and specify the basic instructional program for pupils in public schools, and such program shall be set forth in the standards of accreditation. Other instruction may be given when approved by the board of trustees.

History: En. 75-7503.1 by Sec. 1, Ch. 137, L. 1975; R.C.M. 1947, 75-7503.1.

Cross-References

Duty of Superintendent or principal to recommend course of instruction, 20-4-402.

Enrollment in private school providing equivalent instruction as grounds for failure to enroll in public schools, 20-5-102.

Nonpublic school requirements for compulsory enrollment exemption, 20-5-109.

20-7-112. Sectarian publications prohibited and prayer permitted. A publication of a sectarian or denominational character may not be distributed in any school. Instruction may not be given advocating sectarian or denominational doctrines. However, any teacher, principal, or superintendent may open the school day with a prayer. This section does not prohibit a school library from including the Bible or other religious material having cultural, historical, or educational significance.

History: En. 75-7521 by Sec. 392, Ch. 5, L. 1971; R.C.M. 1947, 75-7521; amd. Sec. 1, Ch. 367, L. 1989.

Cross-References

Freedom of religion guaranteed, Art. II, sec. 5, Mont. Const.

Teaching of sectarian tenets or requiring attendance at religious service prohibited, Art. X, sec. 7, Mont. Const.

Religious instruction released time program, 20-1-308.

20-7-113. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction. The superintendent of public instruction shall collect and maintain a file of curriculum guides to be made available to districts for the use of schools in planning courses of instruction. He may prepare, publish, and distribute curriculum guides for the use of schools in planning courses of instruction. He may solicit the assistance of educators and other qualified persons in the preparation of curriculum guides.

History: En. 75-7505 by Sec. 376, Ch. 5, L. 1971; R.C.M. 1947, 75-7505.

20-7-114. Instructional assistance by superintendent of public instruction. The superintendent of public instruction shall, at the request of the district or county superintendent, assist the schools with the planning, implementation, operation, and evaluation of instruction through inservice training and individual consultation.

History: En. 75-7506 by Sec. 377, Ch. 5, L. 1971; R.C.M. 1947, 75-7506.

Cross-References

Pupil-instruction-related day, 20-1-304.

20-7-115. Private music instruction. Schools may grant credit to pupils completing courses of private music instruction conducted outside of school hours and at the pupils' own expense. The instruction shall be provided by a teacher holding a valid Montana teacher's certificate with a music endorsement. The district granting such credit shall provide adequate supervision for the instruction and shall determine the allowable credit for such courses.

History: En. 75-7508 by Sec. 379, Ch. 5, L. 1971; R.C.M. 1947, 75-7508.

20-7-116. Supervised correspondence study. The trustees of any district may provide supervised correspondence study for a pupil when it is impossible for him to attend a school due to the isolation of his residence or his mental or physical incapacity. Supervision of the correspondence course shall be provided by the district superintendent or the county superintendent if there is no district superintendent.

History: En. 75-7510 by Sec. 381, Ch. 5, L. 1971; R.C.M. 1947, 75-7510.

Cross-References

Duty of trustees to provide alternate forms of transportation, 20-10-121.

Reimbursement for supervised home study, 20-10-125, 20-10-142.

20-7-117. Five-year-old schooling and preschool programs. (1) The trustees of an elementary district shall establish or make available a program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for which the program is to be conducted or who have been enrolled by special permission of the board of trustees. The program must be an integral part of the elementary school and must be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached the age of 5 on or before September 10 of the school year covered by the calculation or have been enrolled by special permission of the board of trustees.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When preschool programs are established, they must be an integral part of the elementary school and must be governed accordingly. Financing of preschool programs may not be supported by money available from state equalization aid.

History: En. 75-7507 by Sec. 378, Ch. 5, L. 1971; amd. Sec. 3, Ch. 345, L. 1973; R.C.M. 1947, 75-7507; amd. Sec. 3, Ch. 334, L. 1979; amd. Sec. 68, Ch. 370, L. 1987; amd. Sec. 1, Ch. 399, L. 1991.

Cross-References

Definition of various schools, 20-6-501.

Circumstances under which the regular average number belonging may be increased, 20-9-313.

20-7-118 through 20-7-130 reserved.

20-7-131. Equivalency of completion of secondary education. The superintendent of public instruction shall issue, in accordance with the policies of the board of public education, appropriate documentation certifying that an eligible applicant has satisfied requirements for equivalency of completion of secondary education. Equivalency of completion of secondary education must include satisfactory completion of a testing program or an external diploma program approved by the board of public education.

History: En. Sec. 2, Ch. 94, L. 1983.

Cross-References
Board of Public Education — rules, 20-2-121.

Part 2
Libraries

Part Cross-References
Authority of Superintendent of Public Instruction to employ educational media supervisor, 20-3-104.

Libraries, Title 22, ch. 1.

20-7-201. State visual, aural, and other educational media library. A library of visual, aural, and other educational media shall be established and maintained by the superintendent of public instruction. The media shall be selected by the superintendent of public instruction on the basis of their usefulness as teaching aids and resources for schools and other educational groups within the state and shall be made available to such schools and groups on a rental fee basis. The rental fees for the use of the materials in the library shall be set by the superintendent of public instruction and shall be deposited in the audiovisual and media library account in the state special revenue fund. The superintendent of public instruction may use these funds, as well as any other funds advanced by a legislative appropriation to the audiovisual and media library account, for the operation, maintenance, enlargement, and other related costs of the library.

History: En. 75-7511 by Sec. 382, Ch. 5, L. 1971; amd. Sec. 1, Ch. 193, L. 1974; R.C.M. 1947, 75-7511; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 2, Ch. 470, L. 1987.

20-7-202. School library required. The trustees of each district shall establish and maintain a school library in each school of the district. Each school library shall comply with at least the minimum requirements of the standards of accreditation adopted by the board of public education.

History: En. 75-7517 by Sec. 388, Ch. 5, L. 1971; R.C.M. 1947, 75-7517.

Cross-References
Contracts with public library board of trustees, 22-1-309.

20-7-203. Trustees' policies for school library. The trustees shall adopt those policies necessary for regulating the use and operation of school libraries. These policies may provide for the use of school libraries by the residents of the district, provided that such use does not interfere with the regular school use of the library.

History: En. 75-7518 by Sec. 389, Ch. 5, L. 1971; R.C.M. 1947, 75-7518.

20-7-204. School library book selection. School library books shall be selected by the district superintendent or a principal if there is no district superintendent, subject to the approval of the trustees. In districts not employing a superintendent or principal, the trustees shall select the school library books on the basis of recommendations of the county superintendent.

History: En. 75-7519 by Sec. 390, Ch. 5, L. 1971; R.C.M. 1947, 75-7519.

20-7-205. Reporting school library information. The trustees shall report school library information requested by the superintendent of public instruction, by the board of public education, or when there is no district superintendent or principal, by the county superintendent.

History: **En. 75-7520 by Sec. 391, Ch. 5, L. 1971; R.C.M. 1947, 75-7520.**

Part 3

Vocational and Technical Education

Part Cross-References

"Postsecondary vocational-technical education" defined, 20-1-101.

20-7-301. Duties of the superintendent of public instruction. The superintendent of public instruction shall be the governing agent and executive officer of the state of Montana for K-12 vocational education. The superintendent of public instruction shall adopt and administer policies to effect the orderly development of a system of K-12 vocational education that is adaptable to changing needs, controlled to prevent unnecessary duplication, coordinated with federal guidelines and requirements for vocational education, and funded to ensure growth and quality programming. In order to accomplish the orderly development of a system of K-12 vocational education, the superintendent of public instruction policies shall include:

(1) a state plan for such development;

(2) standards for K-12 vocational education courses and programs;

(3) a review process for the establishment and deletion of programs;

(4) instructor qualifications for K-12 vocational education courses and programs;

(5) criteria for approval of K-12 vocational education courses and programs;

(6) a basis for apportionment of all moneys appropriated by the legislature for K-12 vocational education in accordance with the intent of the legislature as reflected in the terms of the appropriation;

(7) a basis for apportionment of all moneys received by the state of Montana for K-12 vocational education from the federal government in accordance with the acts of congress;

(8) a system of evaluation of K-12 vocational education which allows for consideration of the current and projected manpower needs and job opportunities; and

(9) any other policy not inconsistent with public law and which is necessary for the proper operation of a system of K-12 vocational education.

History: **En. 75-7702 by Sec. 405, Ch. 5, L. 1971; (amd. Sec. 1, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 1, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7702; amd. Sec. 1, Ch. 598, L. 1979; amd. Sec. 11, Ch. 658, L. 1987.**

20-7-302. Repealed. Sec. 21, Ch. 598, L. 1979.

History: **En. 75-7703 by Sec. 406, Ch. 5, L. 1971; (amd. Sec. 2, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 2, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7703.**

20-7-302.1. State director of K-12 vocational education — duties. There is a state director of K-12 vocational education appointed by the superintendent of public instruction. He must:

(1) administer the K-12 vocational education policies adopted by the superintendent of public instruction;

(2) prepare curriculum guides for superintendent of public instruction adoption;

(3) employ, with the confirmation of the superintendent of public instruction, the professional staff necessary for the state supervision and administration of K-12 vocational education;

(4) report the status of K-12 vocational education in the state of Montana when requested by the superintendent of public instruction;

(5) keep all K-12 vocational education records in his office;

(6) provide K-12 vocational education supervisory and consultative assistance to districts;

(7) prepare any necessary reports for the superintendent of public instruction or the legislature; and

(8) perform any other duty assigned by the superintendent of public instruction.

History: En. Sec. 2, Ch. 598, L. 1979; amd. Sec. 12, Ch. 658, L. 1987.

20-7-303. Authorization to establish and maintain vocational education courses and programs. The trustees of an elementary or high school district may establish and maintain a vocational education course or program that complies with the K-12 vocational education standards adopted by the superintendent of public instruction. In order for a course or program to be eligible for state or federal financing, it shall be approved by the superintendent of public instruction for compliance with K-12 vocational education standards.

History: En. 75-7704 by Sec. 407, Ch. 5, L. 1971; (amd. Sec. 5, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 5, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7704; amd. Sec. 13, Ch. 598, L. 1979; amd. Sec. 13, Ch. 658, L. 1987.

Cross-References

Powers and duties of community college trustees, 20-15-225.

20-7-304. Repealed. Sec. 31, Ch. 658, L. 1987.

History: En. Sec. 7, Ch. 598, L. 1979.

20-7-305. Funding for secondary vocational education and industrial arts programs — application — rules. (1) The superintendent of public instruction shall annually distribute money from the biennial appropriation for secondary vocational education and industrial arts. The money shall be allocated to high school districts providing approved secondary vocational education and industrial arts programs in accordance with this section and 20-7-306.

(2) A high school district providing secondary vocational education and industrial arts programs must apply to the superintendent of public instruction for funds available under this section and 20-7-306. The superintendent of public instruction shall by rule prescribe the method for ANB determination, the form of the application, budget procedures, and accounting rules for the funds. The superintendent of public instruction may prescribe other requirements for the receipt of funding not inconsistent with Title 20, chapter 7, part 3.

(3) A secondary vocational education or industrial arts program or a course in such a program in a high school district may not be funded until that program or course has been offered by the school district for 1 school year.

(4) As used in this section and 20-7-306 the term "school district" means a district organized for the purpose of providing educational services for grades 9 through 12, but the term does not include postsecondary vocational education centers.

History: En. Sec. 1, Ch. 287, L. 1981.

Cross-References

ANB defined, 20-1-101.

Definition of elementary and high school districts, 20-6-101.

Definition of various schools, 20-6-501.

Calculation of average number belonging, 20-9-311.

20-7-306. Distribution of secondary vocational education and industrial arts funds. (1) The superintendent of public instruction shall categorize secondary vocational programs into one of five weighted categories based upon the relative additional costs of those programs.

(2) The superintendent of public instruction shall determine the weighted category to be assigned industrial arts programs.

(3) The superintendent of public instruction shall adjust the weighted categories as necessary to assure that the procedures outlined in subsection (4) do not result in entitlements that exceed the amount appropriated.

(4) Funding must be based upon the average number belonging (ANB) for secondary vocational education and industrial arts programs of the high school district in the ANB calculation period immediately preceding the year for which funding is requested. The ANB must be computed for each separate secondary vocational education and industrial arts program.

(5) For secondary vocational education programs, the ANB generated for each category established in subsection (1) must be multiplied by the factor for that category, and the product must be multiplied by the district's direct state aid per-ANB. Industrial arts programs must be funded at 50% of the category assigned. The high school district is entitled to receive for secondary vocational education and industrial arts, the total of the computation of all secondary vocational education and industrial arts categories.

(6) The superintendent of public instruction shall annually distribute the funds allocated in this section by November 1. The money received by the high school district must be deposited into the subfund of the miscellaneous programs fund established by 20-9-507 and may be expended only for approved secondary vocational education and industrial arts programs. The expenditure of the money must be reported in the annual trustees' report as required by 20-9-213.

History: En. Sec. 2, Ch. 287, L. 1981; amd. Sec. 5, Ch. 337, L. 1989; amd. Sec. 50, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (3), after "(4)", deleted "and (5)"; in (5), at end of first sentence, substituted "district's direct state aid per-ANB" for "applicable ANB dollar value established by 20-9-319"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Calculation of average number belonging, 20-9-311.

20-7-307 through 20-7-310 reserved.

20-7-311. Renumbered 20-16-106. Sec. 33, Ch. 658, L. 1987.

20-7-312. Renumbered 20-16-104. Sec. 33, Ch. 658, L. 1987.

20-7-313. Repealed. Sec. 31, Ch. 658, L. 1987.
History: En. 75-7711 by Sec. 414, Ch. 5, L. 1971; R.C.M. 1947, 75-7711.

20-7-314. Renumbered 20-16-108. Sec. 33, Ch. 658, L. 1987.

20-7-315 through 20-7-320 reserved.

20-7-321. Acceptance of acts of congress for vocational education. The state of Montana hereby reaffirms the acceptance of and assents to the terms and provisions of the act of congress entitled the "Vocational Education Act of 1963" and the "Vocational Education Amendments of 1968" and further hereby accepts and assents to the terms and provisions of all acts of the congress amendatory of the "Vocational Education Act of 1963" and to the terms and provisions of all other acts of congress which provide funds for the benefit of vocational education in Montana.
History: En. 75-7705 by Sec. 408, Ch. 5, L. 1971; R.C.M. 1947, 75-7705.

20-7-322. Renumbered 20-16-201. Sec. 33, Ch. 658, L. 1987.

20-7-323. Repealed. Sec. 31, Ch. 658, L. 1987.
History: En. 75-7708 by Sec. 411, Ch. 5, L. 1971; (amd. Sec. 9, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 9, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7708; amd. Sec. 17, Ch. 598, L. 1979.

20-7-324. Renumbered 20-16-202. Sec. 33, Ch. 658, L. 1987.

20-7-325. Renumbered 20-16-204. Sec. 33, Ch. 658, L. 1987.

20-7-326. Repealed. Sec. 31, Ch. 658, L. 1987.
History: En. Sec. 5, Ch. 598, L. 1979; amd. Sec. 1, Ch. 161, L. 1983.

20-7-327. Renumbered 20-16-203. Sec. 33, Ch. 658, L. 1987.

20-7-328 through 20-7-330 reserved.

20-7-331. Repealed. Sec. 31, Ch. 658, L. 1987.
History: En. 75-7712 by Sec. 415, Ch. 5, L. 1971; (amd. Sec. 12, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 12, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7712.

20-7-332. Renumbered 20-16-205. Sec. 33, Ch. 658, L. 1987.

20-7-333. Renumbered 20-16-206. Sec. 33, Ch. 658, L. 1987.

Part 4

Special Education for Exceptional Children

Part Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Attendance of pupils at schools, Title 20, ch. 5, part 1.

Rights of the handicapped, Title 49, ch. 4.

Developmentally disabled, Title 53, ch. 20.

20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized,

that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(2) "Assistive technology service" means any service that directly assists a child with disabilities in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) the evaluation of the needs of a child with disabilities, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with disabilities;

(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;

(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) training or technical assistance for a child with disabilities or, if appropriate, training or technical assistance for that child's family; and

(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(3) "Autism" means a developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or to change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.

(4) "Child with disabilities" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having cognitive delay; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; deaf-blindness; multiple disabilities; or specific learning disabilities and who because of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as a child with disabilities without the specific disabilities being specified.

(5) "Cognitive delay" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(6) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness.

(7) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's educational performance.

(8) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed.

(9) "Free appropriate public education" means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

(10) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included within the definition of deafness.

(11) "Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, cerebral palsy).

(12) "Other health impairment" means limited strength, vitality, or alertness due to chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance.

(13) "Related services" means transportation and any developmental, corrective, and other supportive services that are required to assist a child with disabilities to benefit from special education and includes speech-language pathology, audiology, occupational therapy, physical therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also

includes school health services, social work services in schools, and parental counseling and training.

(14) “Special education” means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with disabilities, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(15) “Specific learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual , hearing, or motor handicaps; cognitive delay; or environmental, cultural, or economic disadvantages.

(16) “Speech-language impairment” means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child’s interpersonal relationships or educational performance.

(17) “Surrogate parent” means an individual appointed to safeguard a child’s rights and protect the child’s interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

(18) “Traumatic brain injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries that are induced by birth trauma.

(19) “Visual impairment” means an impairment that, after correction, adversely affects a child’s educational performance. The term includes both partial blindness and blindness.

History: En. 75-7801 by Sec. 419, Ch. 5, L. 1971; amd. Sec. 1, Ch. 93, L. 1974; amd. Sec. 27, Ch. 266, L. 1977; amd. Sec. 1, Ch. 539, L. 1977; R.C.M. 1947, 75-7801; amd. Sec. 1, Ch. 311, L. 1981; amd. Sec. 1, Ch. 461, L. 1983; amd. Sec. 1, Ch. 560, L. 1985; amd. Sec. 1, Ch. 618, L. 1985; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 19, Ch. 16, L. 1991; amd. Sec. 3, Ch. 249, L. 1991; amd. Sec. 1, Ch. 356, L. 1993.

Compiler’s Comments

1993 Amendment: Chapter 356 inserted definitions of assistive technology device and assistive technology service; substituted present definition of autism for former definition that read: “”Autism“ means a condition that is manifested by severe communication and other developmental and educational problems”; near beginning of definition of child with disabilities inserted reference to evaluation in accordance with the Individuals With Disabilities Education Act and near middle, after “health impairments”, inserted “deaf-blindness; multiple disabilities”; inserted definition of deaf-blindness; at end of definition of deafness, before “educational performance”, substituted “child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child’s” for “child’s hearing is nonfunctional for the purpose of”; substituted present definition of free appropriate public education for former definition that read: ““Free appropriate public education” means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of children with disabilities as adequately as the needs of children without disabilities are met”; near middle of definition of related services, after "physical therapy", inserted "recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training"; inserted definition of traumatic brain injury; and made minor changes in style. Amendment effective July 1, 1993.

20-7-402. Special education to comply with board policies. (1) The conduct of special education programs shall comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies shall assure and include but are not limited to:

(a) placement of children with disabilities in the least restrictive alternative setting;

(b) due process for all children with disabilities, including the appointment of a surrogate parent if necessary;

(c) use of child study teams to identify children with disabilities and use of instructional teams to plan individual education programs;

(d) comprehensive evaluation for each child with disabilities; and

(e) other policies needed to assure a free and appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education.

History: En. 75-7802 by Sec. 420, Ch. 5, L. 1971; amd. Sec. 2, Ch. 539, L. 1977; R.C.M. 1947, 75-7802; amd. Sec. 2, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying children with disabilities;

(5) recommending to districts the type of special education class or program needed to serve the children with disabilities of the districts and preparing appropriate guides for developing individualized education programs;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from those programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for all children with disabilities;

(8) approving, as they are proposed and annually after approval, those special education classes or programs that comply with the laws of the state

of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;

(9) providing technical assistance to district superintendents, principals, teachers, and trustees;

(10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(11) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for children with disabilities administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to children with disabilities within the state;

(13) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

(14) contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child when a state agency places a child with disabilities who is in need of special education in:

(a) an in-state residential facility or children's psychiatric hospital; or

(b) an out-of-state public school or private residential facility.

History: En. 75-7803 by Sec. 421, Ch. 5, L. 1971; amd. Sec. 1, Ch. 174, L. 1975; amd. Sec. 3, Ch. 539, L. 1977; R.C.M. 1947, 75-7803; amd. Sec. 1, Ch. 204, L. 1979; amd. Sec. 1, Ch. 434, L. 1981; amd. Sec. 3, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 3, Ch. 765, L. 1991; amd. Sec. 2, Ch. 356, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 356 at beginning of (11) substituted "ensuring" for "preparing"; at beginning of (12) substituted "ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for children with disabilities administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction" for "acting as the coordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education" and at end inserted "or for providing or paying for some or all of the costs of a free appropriate public education to children with disabilities within the state"; deleted former (13) that read: "administering regional special education services for children in need of special education in accordance with policies of the board of public education"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Special education supervisor employed by Superintendent of Public Instruction, 20-3-103.

Board of Public Education policies, 20-4-102.

Issuance of teacher or specialist certificates, 20-4-103.

Classifications of teacher and specialist certificates, 20-4-106.

20-7-404. Cooperation of state agencies. The state department of health, the department of family services, and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. Nothing herein shall be construed to interfere with the purpose and function of these state agencies.

History: En. 75-7804 by Sec. 422, Ch. 5, L. 1971; amd. Sec. 5, Ch. 539, L. 1977; R.C.M. 1947, 75-7804; amd. Sec. 23, Ch. 609, L. 1987.

20-7-405 through 20-7-410 reserved.

20-7-411. Regular classes preferred — obligation to establish special education program. (1) All children with disabilities in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who do not have disabilities. Separate schooling or other removal of children with disabilities from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district shall provide or establish and maintain a special education program for each child with disabilities between the ages of 6 and 18, inclusive.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with disabilities between the ages of 3 and 6, inclusive.

(4) The board of trustees of a school district may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

(5) The trustees of a school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with disabilities if required as a part of the child's special education services, related services, or supplementary aids.

History: En. 75-7805 by Sec. 423, Ch. 5, L. 1971; amd. Sec. 1, Ch. 123, L. 1971; amd. Sec. 2, Ch. 93, L. 1974; amd. Sec. 6, Ch. 539, L. 1977; R.C.M. 1947, 75-7805; amd. Sec. 3, Ch. 558, L. 1979; amd. Sec. 1, Ch. 258, L. 1987; amd. Sec. 4, Ch. 249, L. 1991; amd. Sec. 3, Ch. 356, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 356 at beginning of (2) deleted "After September 1, 1977" and near middle substituted "each child" for "every person"; at beginning of (3) deleted "On or before September 1, 1990"; inserted (5) regarding availability of assistive technology devices and assistive technology services; and made minor changes in style. Amendment effective July 1, 1993.

Implementation Contingency: Section 3, Ch. 258, L. 1987, provided: "A board of trustees of a school district is not required to implement this act if the federal government does not appropriate at least one-half of the authorized amount for each qualifying handicapped preschool child [now preschool child with disabilities] for school fiscal year 1991 and beyond."

Cross-References

Educational goals and duties, Art. X, sec. 1, Mont. Const.

20-7-412. Establishment of individual district special education program. (1) The trustees of a district, upon obtaining the approval of the superintendent of public instruction, shall establish and maintain a special education program whenever, in the judgment of the trustees and the superintendent of public instruction:

(a) there are sufficient numbers of children with disabilities in the district to justify the establishment of a program; or

(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication, or other individual programs.

(2) Programs may be established for persons with disabilities between the ages of 0 and 21 when the superintendent of public instruction and the trustees have determined that the programs will:

(a) assist a person to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;

(b) permit the conservation or early acquisition of skills that will provide the person with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages that will materially benefit the person.

(3) Approval and operation of programs established pursuant to subsection (2) do not obligate the state or a school district to offer regular educational programs to a similar age group unless specifically provided by law.

(4) When an agency that has responsibility for a person with disabilities over 21 but not more than 25, inclusive, cannot provide appropriate services to that person, the agency may contract with the local school district to provide the services.

History: En. 75-7806 by Sec. 424, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1971; amd. Sec. 2, Ch. 123, L. 1971; amd. Sec. 3, Ch. 93, L. 1974; amd. Sec. 7, Ch. 539, L. 1977; R.C.M. 1947, 75-7806; amd. Sec. 4, Ch. 558, L. 1979; amd. Sec. 5, Ch. 249, L. 1991.

20-7-413. Repealed. Sec. 7, Ch. 356, L. 1993.

History: En. 75-7807 by Sec. 425, Ch. 5, L. 1971; amd. Sec. 3, Ch. 123, L. 1971; amd. Sec. 4, Ch. 93, L. 1974; amd. Sec. 8, Ch. 539, L. 1977; R.C.M. 1947, 75-7807.

20-7-414. Determination of children in need and type of special education needed — approval of classes and programs by superintendent. (1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the school district, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. The school district shall make available a free appropriate public education to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district.

(2) Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superinten-

dent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may not be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the allowable cost payment for special education.

History: En. 75-7811 by Sec. 429, Ch. 5, L. 1971; amd. Sec. 12, Ch. 539, L. 1977; R.C.M. 1947, 75-7811; amd. Sec. 4, Ch. 618, L. 1985; amd. Sec. 17, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 249, L. 1991; amd. Sec. 4, Ch. 356, L. 1993; amd. Sec. 55, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 356 near middle of first sentence of (1) substituted "school district" for "trustees" and substituted second sentence regarding availability of free appropriate public education for former second and third sentences that read: "Whenever the trustees of a school district or the governing authority of an institution learn of a child with disabilities in their jurisdiction who is in need of special education, they shall determine that the child is in need of a surrogate parent if the parents or guardian cannot be identified or, after reasonable efforts, the whereabouts of the parents cannot be discovered or if the child is a ward of the state. The determination must be made within 10 days of the date on which the trustees of a school district or the governing authority of an institution learned of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or the governing authority of an institution shall nominate a surrogate parent for the child as provided in 20-7-461." Amendment effective July 1, 1993.

Name Change — Short Form Amendment: Section 55(2), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers specifically to state funding for special education, to "allowable cost payment" in this section.

Cross-References

Guardians of minors, Title 72, ch. 5, part 2.

20-7-415. Repealed. Sec. 7, Ch. 356, L. 1993.

History: En. 75-7817 by Sec. 4, Ch. 539, L. 1977; R.C.M. 1947, 75-7817; amd. Sec. 10, Ch. 249, L. 1991.

20-7-416 through 20-7-418 reserved.

20-7-419. Rules. The superintendent of public instruction shall adopt rules for the implementation of 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436, including but not limited to:

(1) the calculation of tuition under 20-7-420;

(2) the calculation and distribution of funds under 20-7-435; and

(3) the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, and public schools.

History: En. Sec. 7, Ch. 375, L. 1993.

Compiler's Comments

Effective Date: Section 9, Ch. 375, L. 1993, provided: "[This act] is effective July 1, 1993."

20-7-420. Residency requirements — financial responsibility for special education. (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last known district of residence is the child's district of residence.

(2) The county of residence is financially responsible for tuition and transportation as established under 20-5-323 for a child with disabilities, as defined in 20-7-401, including a child who has been placed by a state agency in a foster care or group home licensed by the state. The county of residence is not financially responsible for tuition and transportation for a child with disabilities who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from the state equalization aid account. However, the amount spent from the state equalization aid account for this purpose may not exceed $500,000 during any biennium.

(4) Under the provisions of 20-7-422(3), the superintendent of public instruction shall provide funds for the education fees required to provide a free appropriate public education for a child with disabilities who is in need of special education and related services and is placed by a state agency in an out-of-state private residential facility or out-of-state public school, provided that, in determining the special education services needed for the child with disabilities, the district of residence has complied with the rules promulgated under 20-7-402.

(5) A state agency that makes a placement of a child with disabilities is responsible for the financial costs of room and board and the treatment of the child.

History: En. Sec. 1, Ch. 470, L. 1979; amd. Sec. 4, Ch. 765, L. 1991; amd. Sec. 1, Ch. 375, L. 1993; amd. Sec. 10, Ch. 563, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 375 in first sentence of (1), after "guardian", inserted "if the parents are deceased"; at beginning of first sentence of (3) substituted "If an eligible child, as defined in 20-7-436, is receiving inpatient treatment" for "If a child with disabilities who is in need of special education is placed", near middle substituted "educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435" for "educational placement is in a public school district", and at end substituted "the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from the state equalization aid account. However, the amount spent from the state equalization aid account for this purpose may not exceed $500,000 during any biennium" for former text that read: "the district of residence is responsible for tuition for the proportion of time the child is served in the public school district unless the public school district is operated primarily for the purpose of providing education to children who attend the residential facility or hospital"; near middle of (4), after "special education", inserted "and related services"; in (5), before "room", inserted "financial costs of"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 563 near beginning of first and second sentences of (2) and near middle of (3) substituted "county" for "district" and after "tuition" inserted "and transportation" (amendment in (3) rendered ineffective by amendment to (3) in ch. 375); in first sentence of (2), after "under", substituted "20-5-323" for "20-5-305 and 20-5-312"; and made minor changes in style.

Code Commissioner Correction: In (3) the Code Commissioner substituted "of direct state aid" for "paid on the foundation program schedules as provided in 20-9-318 through 20-9-320". Sections 20-9-318 through 20-9-320 were repealed by Ch. 633, L. 1993. The Code Commissioner has substituted "direct state aid" because that concept replaced foundation program schedules in Ch. 633, L. 1993. The authority for the correction is found in sec. 84, Ch. 10, L. 1993.

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-7-421. Arranging attendance in another district in lieu of a special education program — tuition. (1) In accordance with a placement decision made by persons determining an individualized education program for a child with disabilities, the trustees may arrange for the attendance of a child in need of special education and related services in another district within the state of Montana.

(2) Tuition and transportation as required under 20-5-323 may be charged as provided in 20-7-420.

History: En. 75-7808 by Sec. 426, Ch. 5, L. 1971; amd. Sec. 1, Ch. 140, L. 1975; amd. Sec. 9, Ch. 539, L. 1977; R.C.M. 1947, 75-7808; amd. Sec. 2, Ch. 470, L. 1979; amd. Sec. 2, Ch. 481, L. 1979; amd. Sec. 2, Ch. 661, L. 1979; amd. Sec. 5, Ch. 765, L. 1991; amd. Sec. 2, Ch. 375, L. 1993; amd. Sec. 11, Ch. 563, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 375 near end of (1), after "special education", inserted "and related services". Amendment effective July 1, 1993.

Chapter 563 in (2), after "Tuition", inserted "and transportation" and after "under" substituted "20-5-323" for "20-5-305 and 20-5-312".

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-7-422. Out-of-state placement of children with disabilities — payment of costs. (1) In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana.

(2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(3) Whenever a child with disabilities who is in need of special education and related services is adjudicated by a court of competent jurisdiction to be an abused, neglected, or dependent child as defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and is placed by a state agency in an out-of-state private residential facility, the superintendent of public instruction shall negotiate with:

(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program.

(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation.

History: En. 75-7809 by Sec. 427, Ch. 5, L. 1971; amd. Sec. 2, Ch. 140, L. 1975; amd. Sec. 10, Ch. 539, L. 1977; R.C.M. 1947, 75-7809; amd. Sec. 3, Ch. 661, L. 1979; amd. Sec. 24, Ch. 609, L. 1987; amd. Sec. 18, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 765, L. 1991; amd. Sec. 3, Ch. 375, L. 1993; amd. Sec. 12, Ch. 563, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 375 in (3), after "special education", inserted "and related services". Amendment effective July 1, 1993.

Chapter 563 deleted second sentence of (1) that read: "The arrangements are not subject to the out-of-state attendance provisions in 20-5-301 and 20-5-311"; and deleted (2)(b) that read: "(b) If the placement of the child with disabilities has met the requirements of 20-7-402, the superintendent of public instruction shall approve the amount of special education instructional fees to be included as a contracted service. Only the special education instructional fees may be included as a contracted service for the purposes of 20-7-431(1)(a)(iii)(A)."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-7-423. Repealed. Sec. 13, Ch. 765, L. 1991.

History: En. 75-7809.1 by Sec. 11, Ch. 539, L. 1977; R.C.M. 1947, 75-7809.1; amd. Sec. 4, Ch. 661, L. 1979; amd. Sec. 10, Ch. 249, L. 1991.

20-7-424. No tuition when attending state institution. Whenever a child is attending a state-funded institution in Montana, the resident district or county is not required to pay tuition to the state institution for the child, but whenever at the recommendation of institution officials the child attends classes conducted by a school within a local district, the district or county where the parents or guardian of the child maintains legal residence shall pay tuition to the district operating the school in accordance with the provisions of 20-5-321 or 20-7-421, whichever section applies to the circumstances of the child. Transportation payments must be made for students enrolled in any school district classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments must be approved in accordance with existing transportation payment schedules and must be approved by the county transportation committee and the superintendent of public instruction.

History: En. 75-7810 by Sec. 428, Ch. 5, L. 1971; amd. Sec. 1, Ch. 282, L. 1971; amd. Sec. 1, Ch. 45, L. 1973; amd. Sec. 7, Ch. 91, L. 1973; R.C.M. 1947, 75-7810; amd. Sec. 13, Ch. 563, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 563 near end of first sentence, before "operating", deleted "or county" and before "or 20-7-421" substituted "20-5-321" for "20-5-305" and in third sentence, after "existing", deleted "special education"; and made minor changes in style.

Effective Date — Applicability: Section 22, Ch. 563, L. 1993 provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Cross-References

Duty of trustees to provide transportation, 20-10-121.

20-7-425 through 20-7-430 reserved.

20-7-431. *(Temporary)* **Allowable cost schedule for special programs — superintendent to make rules — annual accounting.** (1)

For the purpose of determining the allowable cost payment amount for special education as defined in 20-9-321, the following schedule of allowable costs must be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the allowable cost payment for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program;

(ii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost;

(iii) other expenses:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

(B) transportation costs for special education personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(b) supportive services, including:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel who assist professional personnel in supportive services—the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program;

(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(iv) repair and maintenance of equipment—the actual total cost.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that must be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the allowable cost payment for special education.

(5) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6) (a) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve an allowable cost payment amount for special education that exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

(b) If the total allowable cost of the special education budgets exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon prioritized budget items as established by the superintendent of public instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the allowable cost payment for special education and is the responsibility of the school district.

20-7-431. *(Effective July 1, 1994)* **Allowable cost schedule for special programs — superintendent to make rules — annual accounting.** (1) For the purpose of determining the allowable cost payment amount for special education as defined in 20-9-321, the following allowable costs and reports must be reviewed by the superintendent of public instruction for the purposes of determining the amount of the allowable cost payment for special education payments and a district's special education expenditures:

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

(i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher aides, corresponding to the working time that each person devotes to the special program;

(ii) the total cost of teaching supplies and textbooks for special programs;

(iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;

(iv) activities associated with teacher assistance teams that provide prereferral intervention;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education instructional personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings;

(b) related services, including:

(i) the cost of salaries and benefits of professional supportive personnel, corresponding to the working time that each person devotes to the special program. Professional supportive personnel may include special education supervisors, speech-language pathologists, audiologists, counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) the cost of salaries and benefits of clerical personnel who assist professional personnel in supportive services, corresponding to the working time that each person devotes to the special program;

(iii) the cost of supplies for special programs;

(iv) activities associated with teacher assistance teams that provide prereferral interventions;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education related services personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings;

(vii) equipment purchase, rental, repair, and maintenance required to implement a student's individualized education program;

(viii) the additional cost of special education cooperatives or joint boards, including operation and maintenance, travel, recruitment, and administration.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

(4) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(5) (a) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve an allowable cost payment amount for special education that exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

(b) If the total special education allowable cost payment, as determined in 20-9-321, exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations.

History: En. 75-7813.1 by Sec. 1, Ch. 344, L. 1974; amd. Sec. 13, Ch. 539, L. 1977; R.C.M. 1947, 75-7813.1; amd. Sec. 1, Ch. 481, L. 1979; amd. Sec. 1, Ch. 661, L. 1979; amd. Sec. 1, Ch. 166, L. 1981; amd. Sec. 1, Ch. 548, L. 1983; amd. Sec. 1, Ch. 376, L. 1985; amd. Sec. 1, Ch. 243, L. 1987; amd. Sec. 19, Ch. 11, Sp. L. June 1989; amd. Sec. 7, Ch. 765, L. 1991; amd. Sec. 1, Ch. 466, L. 1993; amd. Sec. 55, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 466 in (1), near beginning, substituted "allowable costs and reports must be reviewed" for "schedule or allowable costs must be followed by the school district in preparation of its special education budget for state aid request purposes and", after "superintendent of public instruction" deleted "in his review and approval of the budget", and at end substituted "payments and a district's special education expenditures" for "for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313"; in (1)(a)(i), at beginning, inserted "the cost of", after "teacher aids" deleted "special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost", and near end deleted "entire" before "working"; in (1)(a)(ii), at beginning, inserted "the total cost of", after "textbooks" deleted "if used exclusively", and after "programs" deleted "the actual total cost"; inserted (1)(a)(iii) concerning equipment and (1)(a)(iv) concerning activities providing prereferral intervention; deleted former (1)(a)(iii) that read: "(iii) other expenses"; in (1)(a)(v), at beginning, inserted "the cost of" and at end deleted "the actual total cost"; in (1)(a)(vi), before "personnel", inserted "instructional" and at end deleted "the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes"; in (1)(b) substituted "related" for "supportive"; in (1)(b)(i), at beginning, inserted "the cost of", substituted "corresponding to the working time that each person devotes to the special program. Professional supportive personnel may include special education supervisors, speech-language pathologists, audiologists" for "the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program. Professional supportive personnel may include"; in (1)(b)(ii), at beginning, inserted "the cost of" and at end substituted "corresponding to the working time that each person devotes to the special program" for "the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program"; deleted (1)(c) that read: "(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(iv) repair and maintenance of equipment—the actual total cost"; inserted (1)(b)(iii) concerning supplies, (1)(b)(iv) concerning prereferral interventions, (1)(b)(v) concerning contracted services, (1)(b)(vi) concerning transportation costs, (1)(b)(vii) concerning equipment, and (1)(b)(viii) concerning cooperatives; deleted (2)(b) and (2)(c) that read: "(b) defining the total special program caseload that must be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section"; deleted former (4) that read: "(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the foundation program for special education"; in (5)(b), near beginning, substituted "special education allowable cost payment, as determined in 20-9-321" for "allowable cost of the special education budgets" and at end, after "appropriations", deleted "based upon prioritized budget items as established by the superintendent of public instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the foundation program for special education and is the responsibility of the school district"; and made minor changes in style. Amendment effective July 1, 1994.

Name Change — Short Form Amendment: Section 55(2), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers specifically to state funding for special education, to "allowable cost payment" in this section.

Cross-References

Limit on expenditures, 17-8-103.

Financing special education, 20-9-303.

20-7-432 through 20-7-434 reserved.

20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children with emotional disturbances. (1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate public education for eligible children with disabilities that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.

(2) The superintendent of public instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility.

(3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

(a) ensure the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment facility;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance;

(c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy;

(d) provide funding for allowable costs according to a proration based on average daily membership.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment and an education under contract with an in-state children's psychiatric hospital or residential treatment facility.

(5) If a children's psychiatric hospital or residential treatment facility fails to provide an education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part for an eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in which the children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children attending the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school district must include all education and related services costs that may be negotiated under the provisions of subsection (3) and all education and related services costs necessary to fulfill the requirements of providing the child with an education.

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308.

History: En. Sec. 9, Ch. 765, L. 1991; amd. Sec. 4, Ch. 375, L. 1993; amd. Sec. 51, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 375 at end of (1) inserted "including the provision of a free appropriate public education for eligible children with disabilities that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109"; in (3)(a), at beginning, substituted "ensure the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children" for "monitor the provision of an appropriate educational opportunity for the child"; deleted former (3)(c) that required 100% funding of approved allowable costs under this section from appropriated funds and that required an excess appropriation to revert to the state equalization aid account; inserted (3)(c) requiring funding of approved allowable costs from appropriations with exception of services reimbursed under state or federal law or an insurance policy; inserted (3)(d) requiring funding for allowable costs according to proration based on average daily membership; in (4), after "treatment", inserted "and an education under contract with"; near beginning of (5), in first sentence after "provide an", substituted "education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part" for "appropriate educational opportunity" and near end, after "educational program", substituted "that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children" for "for a child" and substituted second sentence providing that the amount negotiated with the school district must include all education and related services costs that may be negotiated under subsection (3) and all education and related services costs necessary to fulfill requirements for providing child with an education for former second sentence that read: "The amount negotiated with the school district must be consistent with allowable costs that may be negotiated under the provisions of subsection (3)"; in (6), at end, inserted "including funds received under the provisions of 20-7-420"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 633 in (6)(b) substituted "20-9-308" for "20-9-315"; deleted (6)(c) that read: "(c) may not be included in the foundation program amount of the district"; and made minor changes in style. Amendment effective July 1, 1993.

20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth that have the treatment of chemical dependency as the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age and is emotionally disturbed as defined in 20-7-401 or 52-2-101 and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to persons under 21 years of age;

(iii) is licensed by the department of health and environmental sciences; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of health and environmental sciences pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth who have the treatment of chemical dependency as a primary reason for treatment.

History: En. Sec. 10, Ch. 765, L. 1991; amd. Sec. 5, Ch. 375, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 375 in definition of eligible child, before "52-2-101", inserted "20-7-401 or"; in definition of residential treatment facility, in (a)(i) after "disturbances", deleted "and that is licensed by the state and operated for the primary purpose of providing long-term treatment services for mental illness, in a residential setting, to persons under 21 years of age", inserted (a)(ii) to include operating for the primary purpose of providing residential psychiatric care to persons under 21, inserted (a)(iii) requiring licensure by Department of Health and Environmental Sciences, inserted (a)(iv) requiring participation in Montana Medicaid program for psychiatric services for persons under 21, and inserted (a)(v) to include a facility that notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv) has received a certificate of need from Department of Health and Environmental Sciences prior to January 1, 1993; and made minor changes in style. Amendment effective July 1, 1993.

20-7-437. Renumbered 20-5-316. Sec. 21, Ch. 563, L. 1993.

20-7-438 through 20-7-440 reserved.

20-7-441. Special education child eligibility for transportation. With the approval of the superintendent of public instruction, any special education child shall be eligible for transportation, which shall be provided by the resident district, when he is enrolled:

(1) in a special education class or program operated by the district of such child's residence;

(2) in a special education class or program operated by a Montana district other than the child's resident district;

(3) under an approved tuition agreement in a special education class or program operated outside of the state of Montana; or

(4) under an approved tuition agreement in a private institution.

History: En. 75-7814 by Sec. 432, Ch. 5, L. 1971; amd. Sec. 14, Ch. 539, L. 1977; R.C.M. 1947, 75-7814.

Cross-References

Duty of trustees to provide transportation, 20-10-121.

20-7-442. State transportation reimbursement for special education children. Districts providing children with transportation to a special education class or program and complying with the special education transportation regulations promulgated by the superintendent of public instruction shall be eligible for a transportation reimbursement. The reimbursement shall be calculated from a schedule established by the superintendent of public instruction with the state providing 50% of the reimbursement.

History: En. 75-7815 by Sec. 433, Ch. 5, L. 1971; R.C.M. 1947, 75-7815; amd. Sec. 4, Ch. 711, L. 1991; amd. Sec. 1, Ch. 9, Sp. L. July 1992.

Cross-References

State transportation reimbursement, 20-10-145.

20-7-443. Financial assistance for under-six-year-old special education class or program. Any district operating an approved special education class or program for children under the age of 6 years shall be eligible for financial assistance in accordance with 20-7-431 and for transportation reimbursement under 20-7-442.

History: En. 75-7816 by Sec. 434, Ch. 5, L. 1971; amd. Sec. 2, Ch. 122, L. 1971; amd. Sec. 15, Ch. 539, L. 1977; R.C.M. 1947, 75-7816.

Cross-References

Maximum general fund budget for special education, 20-9-321.

Computation of revenues and net tax levy requirements for the transportation fund budget, 20-10-144.

County transportation reimbursement, 20-10-146.

20-7-444 through 20-7-450 reserved.

20-7-451. Authorization to create full service education cooperatives. (1) A school district may contract with one or more other school districts to establish a cooperative to perform any or all education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

(2) A cooperative contract may allow money allocated to a cooperative to be expended for:

(a) recruitment of professionals or employees for the cooperative; and

(b) facility rental and supportive services, including but not limited to janitorial and communication services.

History: En. Sec. 1, Ch. 471, L. 1979; amd. Sec. 1, Ch. 156, L. 1985; amd. Sec. 2, Ch. 343, L. 1989; amd. Sec. 1, Ch. 136, L. 1991.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

Trustees to execute all contracts in name of school district, 20-9-213.

Educational cooperative agreements, Title 20, ch. 9, part 7.

20-7-452. Detailed contents of full service education cooperative contracts. The contract authorized in 20-7-451 may include all necessary and proper matters but must specify the following:

(1) its duration, which may not be less than 3 years for purposes of providing special education services;

(2) the precise organization, composition, and nature of the cooperative;

(3) the purpose of the cooperative;

(4) the manner of financing the cooperative and establishing and maintaining a budget for the cooperative;

(5) the permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination;

(6) provision for a management board that is responsible for administering the cooperative and that is comprised of trustees of the contracting districts or their authorized representatives;

(7) the manner of acquiring, holding, and disposing of real and personal property used by the cooperative;

(8) any other necessary and proper matters.

History: En. Sec. 2, Ch. 471, L. 1979; amd. Sec. 3, Ch. 343, L. 1989; amd. Sec. 2, Ch. 136, L. 1991.

Cross-References

School property, Title 20, ch. 6, part 6.

Contracts, Title 28, ch. 2.

20-7-453. Submission of agreement to attorney general. (1) Every contract made under the provisions of 20-7-451 through 20-7-456 must, as a condition precedent to its performance, be submitted to the attorney general who must determine whether the contract is in proper form and compatible with the laws of Montana.

(2) The attorney general must approve any contract submitted to him pursuant to 20-7-451 unless he finds that it does not meet the conditions set forth in 20-7-451 and 20-7-452, in which case he must detail, in writing addressed to the school districts concerned, the specific respects in which the proposed contract fails to meet the requirements of law. Failure to disapprove a contract within 30 days of its submission constitutes approval of the contract by the attorney general.

History: En. Sec. 3, Ch. 471, L. 1979.

20-7-454. Final approval and filing of full service education cooperative contract. Within 10 days after approval by the attorney general and prior to commencement of its performance, a full service education cooperative contract made pursuant to 20-7-451 through 20-7-456 must be:

(1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;

(2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and

(3) filed with the secretary of state.

History: En. Sec. 4, Ch. 471, L. 1979; amd. Sec. 3, Ch. 136, L. 1991.

Cross-References

Filing fees of Secretary of State, 2-6-103.

Fees of County Clerk, 7-4-2631.

20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract. A school district entering into a full service education cooperative contract pursuant to 20-7-451 through 20-7-456 may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer, management board, or joint board created for the purpose of performance of the cooperative contract such material, personnel, or services as may be within its legal power to furnish.

History: En. Sec. 5, Ch. 471, L. 1979; amd. Sec. 4, Ch. 136, L. 1991.

Cross-References

School property, Title 20, ch. 6, part 6.

20-7-456. Tenure of teachers employed by cooperatives. (1) Teachers who have tenure rights with a district and are employed by a cooperative of which their district is a member do not lose their tenure with the district.

(2) Nontenured teachers employed by a cooperative acquire tenure with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 are applicable to teachers employed by a cooperative.

(3) Tenure for a teacher employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.

(4) For the purposes of tenure of a teacher employed by a cooperative, cooperative contract renewals may not be used to limit the teacher's progress toward tenure status.

History: En. Sec. 6, Ch. 471, L. 1979; amd. Sec. 5, Ch. 136, L. 1991.

Cross-References

Teacher tenure, 20-4-203.

20-7-457. Funding provisions for special education purposes of cooperatives or joint boards. (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 prior to July 1, 1992, for special education purposes the special education allowable cost payments determined pursuant to 20-9-321.

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to

participate or to not participate in a joint board agreement for the next school fiscal year.

(4) A cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives.

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

(6) Before July 1, 1994, the superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(7) Restructuring of cooperatives established for providing special education services must:

(a) be limited to a statewide total of no more than 23;

(b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and

(c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative member.

History: **En. Sec. 4, Ch. 343, L. 1989; amd. Sec. 6, Ch. 136, L. 1991; amd. Sec. 4, Ch. 568, L. 1991; amd. Sec. 2, Ch. 466, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 466 in (1), after "20-3-361", substituted "prior to July 1, 1992, for special education purposes the special education allowable cost payments determined pursuant to 20-9-321" for "for special education purposes the approved allowable costs for contracted special education services from the state special revenue fund for state equalization aid as provided in 20-9-343. The total of the payments must be within the limit set by the legislature for approved special education budgets"; in (4), at beginning, deleted "After June 30, 1990" and at end deleted "formed after June 30, 1990"; and inserted (6) concerning boundaries for cooperatives and (7) concerning restructuring of cooperatives.

Cross-References

Joint board organization and voting membership, 20-3-361.

State equalization aid, 20-9-343.

20-7-458. *(Temporary)* **Reduced caseloads for qualifying cooperatives or joint boards.** The superintendent of public instruction may reduce the caseloads for any itinerant special education personnel of a full service education cooperative or a joint board formed under 20-3-361 for special education purposes if the cooperative or joint board meets the requirements of 20-7-457. The superintendent shall adopt rules to determine the eligibility of a cooperative or a joint board for reduced caseloads under this section. *(Repealed effective July 1, 1994—secs. 9, 10(2), Ch. 466, L. 1993.)*

History: **En. Sec. 5, Ch. 343, L. 1989; amd. Sec. 7, Ch. 136, L. 1991.**

20-7-459 and 20-7-460 reserved.

20-7-461. Appointment and termination of appointment of surrogate parent. (1) A school district or institution that provides education to a child with disabilities shall adopt procedures to assign an individual to act as a surrogate parent for a child with disabilities whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. The determination of need for a surrogate parent must be made within 10 days of the date on which the school district or its designee or the governing authority of an institution or its designee learns of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days of that determination.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency. The surrogate parent may not have a vested interest that will conflict with the person's representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 45 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent.

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

(a) a child's parents are identified;

(b) the location of the parents is discovered;

(c) the child is no longer a ward of the state; or

(d) the surrogate parent wishes to discontinue the appointment.

History: En. Sec. 5, Ch. 618, L. 1985; amd. Sec. 7, Ch. 249, L. 1991; amd. Sec. 5, Ch. 356, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 356 substituted present (1) regarding assignment of surrogate parent for former subsection that read: "Any person may advise the trustees of a school district or the governing authority of an institution of a child with disabilities within the district who may be in need of a surrogate parent. The trustees of a school district or the governing authority of an institution shall determine whether the child is in need of a surrogate parent as provided in 20-7-414. If the trustees of a school district or the governing authority of an institution determine that the child is in need of a surrogate parent, they shall nominate a surrogate parent for the child within 30 days of that determination"; in (3), in two places after "district", inserted "or their designee" and in two places, after "institution", inserted "or its designee"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Youth Court Act, Title 41, ch. 5.

20-7-462. Responsibilities of surrogate parent. A person assigned as a surrogate parent shall represent the child with disabilities in all decision-making processes concerning the child's education by:

(1) becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs;

(2) complying with state and federal law as to the confidentiality of all records and information to which he is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child;

(3) becoming familiar with the educational evaluation and placement for the child and by giving his approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and such other programs as may be available; and

(4) initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever such assistance is in the best interest of the child.

History: En. Sec. 6, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991.

20-7-463. Surrogate parent — immunity from liability — reimbursement. (1) A person appointed as a surrogate parent is exempt from liability for any act or omission performed by him in his capacity as a surrogate parent except an act or omission which is found to have been committed in a grossly negligent or malicious manner.

(2) A surrogate parent has the same protection and immunity in professional communications as a teacher.

(3) A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of his duties, as prescribed by rules adopted by the superintendent of public instruction.

History: En. Sec. 7, Ch. 618, L. 1985.

Part 5

Traffic Education

Part Cross-References

National defense highway plans and drivers' training, 10-3-107.

School safety patrols, 20-1-408.

Highway traffic safety administration, 61-2-103.

Licensure of 15-year-olds upon completion of driver's education, 61-5-105.

Instruction and traffic education permits and temporary licenses, 61-5-106.

Traffic regulation, Title 61, ch. 8.

Violation of safety patrol signals, 61-8-502.

20-7-501. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Instructor of motorcycle safety training" means an instructor approved by the superintendent of public instruction to instruct motorcycle safety training.

(2) "Motorcycle safety training course" means a course for beginning and experienced motorcycle riders with both classroom and on-road components that has been approved by the superintendent of public instruction and that is designed to teach motorcyclists how to safely operate their vehicles.

(3) "Teacher of traffic education" means an instructor approved by the superintendent of public instruction to teach traffic education.

(4) "Traffic education" means instruction in motor vehicle, bicycle, pedestrian, and school bus traffic laws or motorcycle laws, in the acceptance of personal responsibility on the public highways, in the causes and consequences of traffic accidents, and in the skills necessary for the safe operation of bicycles and motor vehicles or motorcycles. The instruction must be designed to improve public awareness of motor vehicle, pedestrian, and school bus safety with regard to protecting school-age children.

(5) "Traffic education account" means the state treasury account in the state special revenue fund for the deposit and disbursement of state traffic education revenue.

(6) "Traffic education course" means a course of traffic education which has been approved by the superintendent of public instruction.

History: En. 75-7901 by Sec. 435, Ch. 5, L. 1971; R.C.M. 1947, 75-7901; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 428, L. 1991; amd. Sec. 4, Ch. 701, L. 1991.

Compiler's Comments

Repeal of Termination Date: Section 1, Ch. 63, L. 1993, repealed sec. 2, Ch. 428, L. 1991, which provided that the 1991 amendments to this section terminated October 1, 1993. Repealer effective February 19, 1993.

20-7-502. Duties of superintendent of public instruction. The superintendent of public instruction shall:

(1) develop, administer, and supervise a program of instruction in traffic education;

(2) establish basic course requirements in instruction for traffic education;

(3) establish the qualifications for a teacher of traffic education and an instructor of motorcycle safety training. Qualifications for an instructor of motorcycle safety training must be based upon national standards promulgated by the motorcycle safety foundation or a similar organization recognized by the superintendent.

(4) approve teachers of traffic education and instructors of motorcycle safety training when the teachers or instructors are qualified;

(5) establish criteria for traffic education and motorcycle safety training course approval based on the basic course requirements, teacher of traffic education qualifications, and the requirements of law;

(6) approve traffic education courses when the courses meet the criteria for approval;

(7) promulgate a policy for the distribution of the traffic education money to approved traffic education courses and annually order the distribution of the proceeds of the traffic education account in the manner required by law;

(8) assist districts with the conduct of traffic education; and

(9) periodically conduct onsite driver education program reviews and motorcycle safety training course monitoring.

History: En. 75-7904 by Sec. 438, Ch. 5, L. 1971; R.C.M. 1947, 75-7904; amd. Sec. 5, Ch. 701, L. 1991.

20-7-503. District establishment of traffic education program. The trustees of any district operating a junior high school or high school may establish and maintain a traffic education course. The traffic education course shall be:

(1) for students who are 15 years old or older or will have reached their 15th birthday within 6 months of the course completion;

(2) taught by a teacher of traffic education;

(3) conducted in accordance with the basic course requirements established by the superintendent of public instruction; and

(4) taught during regular school hours, after regular school hours, on Saturdays, or as a summer school course, at the option of the trustees.

History: En. 75-7905 by Sec. 439, Ch. 5, L. 1971; R.C.M. 1947, 75-7905.

20-7-504. State traffic education account — proceeds earmarked for the account. (1) There is a traffic education account in the treasury of the state of Montana. There must be paid into this account a portion of the fines and forfeitures collected in any court except a justice's court from persons apprehended or arrested by highway patrol officers or department of transportation peace officers for any violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 relating to the operation or use of motor vehicles in the following amounts:

(a) if a fine is imposed, 25% of the fine imposed;

(b) if multiple offenses are involved, 25% of the total sum of all fines imposed;

(c) if a fine is suspended, in whole or in part, 25% of the fine actually paid; and

(d) if any deposit of bail is made for an offense to which this section applies and the bail is forfeited, 25% of the forfeited bail.

(2) A portion of all money from the collection of fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses must be contributed to the traffic education account as provided in 61-5-121.

(3) Money collected and accrued from motorcycle safety training courses, designated grants, and motorcycle registration fees or an amount equal to that amount must be deposited in the state traffic education account as provided in 20-7-513 and 20-7-514 and must be available to support only approved motorcycle safety training courses, appropriate motorcycle safety instructor training, and other related motorcycle safety training activities.

History: En. 75-7902 by Sec. 436, Ch. 5, L. 1971; R.C.M. 1947, 75-7902; amd. Sec. 96, Ch. 421, L. 1979; amd. Sec. 1, Ch. 487, L. 1981; amd. Sec. 7, Ch. 277, L. 1985; amd. Sec. 13, Ch. 557, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 701, L. 1991; amd. Sec. 2, Ch. 11, Sp. L. July 1992.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Application for license, 61-5-107.

Fees for licenses, 61-5-111, 61-5-114.

Penalties for violation of traffic laws, Title 61, ch. 8, part 7.

20-7-505. Transmittal of proceeds from fines and other sources. (1) The portion of the proceeds from fines and bail forfeitures, except those paid to a justice's court, which are to be deposited in the traffic education account shall be transmitted to the county treasurer by the court collecting them, in the manner and at the times that fines and bail forfeitures are transmitted to the county treasurer under law. The court shall indicate what portion of each fine is to be credited to the traffic education account. The county treasurer shall transmit monthly to the state treasurer, without deduction, the portions of the fines received, except those paid to a justice's court, which are to be credited to the traffic education account.

(2) When a court is required to transmit fees, fines, and forfeitures directly to the state treasurer, the gross proceeds including the portion of the fines to be credited to the traffic education account shall be transmitted to the state treasurer and the appropriate portion shall be deposited in the traffic education account.

History: En. 75-7903 by Sec. 437, Ch. 5, L. 1971; R.C.M. 1947, 75-7903; amd. Sec. 2, Ch. 487, L. 1981; amd. Sec. 14, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

20-7-506. Annual allocation and distribution of traffic education account proceeds — allocation for state administration. (1) The superintendent of public instruction shall annually order the distribution of all moneys in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education moneys shall be based on the distribution policy promulgated by the superintendent of public instruction, provided that the reimbursements to districts shall be based upon the number of pupils who, in a given school fiscal year, complete an approved traffic education course, including both the classroom instruction and behind-the-wheel driving.

(2) Before such fund is disbursed, there shall be deducted an amount necessary to provide for the state administration of the traffic education program by the superintendent of public instruction. Such state administration may include:

(a) development, printing, and distribution of essential materials;

(b) preparation of teachers of traffic education;

(c) state supervision of the program; and

(d) any and all other activities deemed necessary by the superintendent of public instruction.

History: En. 75-7906 by Sec. 440, Ch. 5, L. 1971; amd. Sec. 1, Ch. 307, L. 1973; R.C.M. 1947, 75-7906.

20-7-507. District traffic education fund. The trustees of any district maintaining a traffic education course shall establish a special nonbudgeted fund with the county treasurer for traffic education. The state traffic education reimbursement and all nontax receipts for traffic education shall be deposited in the district's traffic education fund. The expenditure of the moneys deposited in the district's traffic education fund shall not be subject to the budgeting provisions of this title and the moneys may be expended for traffic education.

History: En. 75-7907 by Sec. 441, Ch. 5, L. 1971; R.C.M. 1947, 75-7907.

Cross-References

Traffic education fund, 20-9-510.

20-7-508 and 20-7-509 reserved.

20-7-510. Motorcycle safety promotion. In cooperation with other state, local government, and private agencies, the department of justice and the superintendent of public instruction are encouraged to promote safety and awareness in the use and operation of motorcycles through action appropriate to the agencies' purposes and goals, including advertising and encouraging motorcycle safety training.

History: En. Sec. 1, Ch. 324, L. 1989; Sec. 61-2-401, MCA 1989; redes. 20-7-510 by Sec. 10, Ch. 701, L. 1991.

20-7-511. Motorcycle safety advisory committee. (1) There is a motorcycle safety advisory committee. The committee is allocated to the office of the superintendent of public instruction for administrative purposes.

(2) The purpose of the motorcycle safety advisory committee is to advise the superintendent of public instruction and the department of justice concerning motorcycle rider safety issues, motorcycle safety training, motorcycle endorsement testing, and other matters relating to motorcycle safety.

(3) The motorcycle safety advisory committee consists of five members. Except as provided in subsection (5)(a), each member must be appointed for a term of 4 years. The committee consists of:

(a) one peace officer appointed by the governor;

(b) one certified motorcycle safety instructor, as provided in 20-7-512, who is appointed by the superintendent of public instruction;

(c) two motorcycle riders representing motorcycle riding groups, such as the American motorcyclist association or American bikers aiming toward education (ABATE), to be nominated by these groups for appointment by the governor; and

(d) one representative from the department of justice who is appointed by the attorney general.

(4) A member may be removed for cause. If a vacancy occurs, a member must be appointed to fill the unexpired term by the authority that appointed the vacating member.

(5) (a) (i) To allow for staggered membership appointments, the initial terms of two committee members must be for 2 years. These members are:

(A) the peace officer provided for in subsection (3)(a); and

(B) one motorcycle rider, provided for in subsection (3)(c), to be chosen by lot at the organizational meeting.

(ii) The successors for the peace officer and motorcycle rider shall serve 4-year terms.

(b) The first motorcycle safety instructor member appointed under subsection (3)(b) need not be certified by the superintendent of public instruction, but the member shall have a motorcycle safety instructor certification awarded by a national organization concerned with motorcycle safety.

History: En. Sec. 2, Ch. 324, L. 1989; Sec. 61-2-402, MCA 1989; redes. 20-7-511 by Sec. 10, Ch. 701, L. 1991.

20-7-512. Standards for motorcycle safety training. The superintendent of public instruction shall establish minimum motorcycle safety training standards, including instruction, courses, and instructor certification for conducting training authorized by 20-7-513. The standards must be based upon national standards promulgated by the motorcycle safety foundation or a similar organization recognized by the superintendent.

History: En. Sec. 3, Ch. 324, L. 1989; Sec. 61-2-403, MCA 1989; redes. 20-7-512 by Sec. 10, Ch. 701, L. 1991.

20-7-513. Motorcycle safety training course — fee. (1) The superintendent may charge a fee for the cost of conducting motorcycle safety training courses. The fee must be deposited in the state traffic education account, as provided in 20-7-504.

(2) The superintendent may contract with qualified persons throughout the state to conduct motorcycle safety training courses outside of the formal education system at times and places that will attract the greatest number of students.

(3) State agencies and subdivisions of the state may provide facilities such as classrooms and outdoor paved areas or other resources for conducting motorcycle safety training courses.

(4) Subject to the availability of funds, the superintendent may pay for construction, repair, or purchases or award grants from the state traffic education account to provide facilities for motorcycle safety training courses.

History: En. Sec. 4, Ch. 324, L. 1989; amd. Sec. 1, Ch. 701, L. 1991; Sec. 61-2-404, MCA 1989; redes. 20-7-513 by Sec. 10, Ch. 701, L. 1991.

20-7-514. Motorcycle registration fee — exemptions. (1) A motorcycle safety training fee of $2.50 must be assessed on each motorcycle required by 61-3-301 to be registered for licensing.

(2) The county treasurer shall collect the fee and remit the fee to the state treasurer for deposit in the state traffic education account, as provided in 20-7-504.

(3) Exempt from payment of the fee specified in subsection (1) are vehicles:

(a) leased or owned by the state or a county or municipality;

(b) used for transportation by a nonresident or migratory worker temporarily employed in agricultural work in this state; or

(c) displaying dealer or wholesaler plates, as provided in 61-4-103, while owned by a dealer or wholesaler.

History: En. Sec. 5, Ch. 324, L. 1989; amd. Sec. 12, Ch. 383, L. 1991; amd. Sec. 2, Ch. 701, L. 1991; Sec. 61-2-405, MCA 1989; redes. 20-7-514 by Sec. 10, Ch. 701, L. 1991.

Part 6

Textbook Regulation

Part Cross-References

Proscribed acts relating to contracts and claims, Title 2, ch. 2, part 2.

"Textbook" and "textbook dealer" defined, 20-1-101.

Conflict of interest, 20-1-205.

School property, Title 20, ch. 6, part 6.

Conflicts of interest, letting contracts, and calling for bids, 20-9-204.

20-7-601. Free textbook provisions. (1) The trustees of each district shall provide free textbooks to the public school pupils of the district. The trustees shall purchase such textbooks at the expense of the district and loan them to such pupils free of charge, subject to the textbook damage policy of the trustees.

(2) For the purpose of this section only, textbooks shall not include those books or manuals which are rendered unusable as a result of having pages designed to be written upon or removed during the course of the study they

serve. When the parents of a pupil attending a school of the district so request, such textbooks shall be sold to them at cost.

History: **En. 75-7602 by Sec. 394, Ch. 5, L. 1971; R.C.M. 1947, 75-7602.**

Cross-References

Free education to be provided, Art. X, sec. 1, Mont. Const.

20-7-602. Textbook selection and adoption. Textbooks shall be selected by the district superintendent or by the school principal if there is no district superintendent. Such selections shall be subject to the approval of the trustees. In districts not employing a district superintendent or principal, the trustees shall select and adopt the textbooks on the basis of recommendations of the county superintendent.

History: **En. 75-7603 by Sec. 395, Ch. 5, L. 1971; R.C.M. 1947, 75-7603.**

20-7-603. Textbooks obtained from licensed textbook dealer. Textbooks selected and adopted by districts shall be obtained from a licensed textbook dealer.

History: **En. 75-7604 by Sec. 396, Ch. 5, L. 1971; amd. Sec. 1, Ch. 89, L. 1973; R.C.M. 1947, 75-7604.**

Cross-References

School officers not to act as agents, 20-1-201.

20-7-604. Licensing textbook dealers. (1) Textbook dealers shall be licensed to sell textbooks by the superintendent of public instruction. To obtain a license a textbook dealer shall first file with the superintendent of public instruction his written agreement to:

(a) guarantee that textbooks shall be supplied to any district at the listed, uniform sales prices in effect for schools, except that such prices may be reduced in accordance with this section;

(b) guarantee that at no time shall any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(c) reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

(2) Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond shall run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond shall be set by the superintendent of public instruction and shall be not less than $2,000 but not more than $10,000. The bond shall be approved by the attorney general. It shall be the responsibility of the textbook dealer to maintain the surety bond on a current basis.

(3) When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.

History: **En. 75-7605 by Sec. 397, Ch. 5, L. 1971; amd. Sec. 2, Ch. 89, L. 1973; R.C.M. 1947, 75-7605.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

20-7-605. Notification and processing of complaint against a licensed textbook dealer. (1) A district or county superintendent shall notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:

(a) offering to sell textbooks at a higher price than the listed uniform sales price filed with the superintendent of public instruction;

(b) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States; or

(c) in any other way performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

(2) Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the complaint. If the superintendent of public instruction finds that the licensed textbook dealer has violated any provision of this section and the dealer fails to rectify his error within 30 days of the notification of the finding of a violation, he shall forfeit his surety bond. The attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount so recovered shall be paid into the state public school equalization aid account.

History: En. 75-7607 by Sec. 399, Ch. 5, L. 1971; amd. Sec. 3, Ch. 89, L. 1973; amd. Sec. 25, Ch. 266, L. 1977; R.C.M. 1947, 75-7607.

20-7-606. Doing business without textbook dealer's license — penalty. Any textbook dealer who shall sell or offer for sale or adoption a textbook to any district or county superintendent without first obtaining a textbook license from the superintendent of public instruction shall be guilty of a misdemeanor. Upon conviction of such misdemeanor, he shall be fined not less than $500 or more than $2,000.

History: En. 75-7608 by Sec. 400, Ch. 5, L. 1971; R.C.M. 1947, 75-7608.

20-7-607. Restricting competition — penalty. At any time a licensed textbook dealer enters into any understanding, agreement, or combination to control textbook prices or otherwise restrict competition in the sale of textbooks, he shall forfeit his surety bond and textbook dealer's license. The attorney general shall institute and prosecute legal proceedings for the forfeiture of the surety bond of such licensed textbook dealer and for revocation of his textbook dealer's license.

History: En. 75-7609 by Sec. 401, Ch. 5, L. 1971; R.C.M. 1947, 75-7609.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

20-7-608. Offer or acceptance of emoluments or other inducements — penalty. (1) No textbook dealer or his agent shall offer any emolument or other inducement to any trustee or school employee to influence the selection, adoption, or purchase of textbooks.

(2) No trustee, county superintendent, or school employee shall accept any emolument or other inducement from a textbook dealer or agent of such dealer for the use of his influence in the selection, adoption, or purchase of textbooks.

(3) The violation of any provisions of this section shall constitute a misdemeanor. In addition, any trustee, county superintendent, or school employee convicted of such misdemeanor shall be removed from his position.

(4) Nothing in this section shall be construed to prevent the supplying of a necessary number of sample textbooks for the purpose of examination by school officials or school employees.

History: En. 75-7610 by Sec. 402, Ch. 5, L. 1971; R.C.M. 1947, 75-7610.

Cross-References

Trustee removal, 20-3-310.

Personal liability of trustees, 20-3-332.

Official misconduct, 45-7-401.

Misdemeanor — no penalty specified, 46-18-212.

Part 7

Adult Education

Part Cross-References

High school equivalency — certification, 20-7-131.

20-7-701. Definition of adult basic education and adult education. (1) As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(a) The term "adult basic education" means instruction in basic skills such as reading, writing, arithmetic, and other skills required to function in society offered to persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation. Adult basic education may include any subject normally offered in the basic curricula of an accredited elementary or secondary school in the state.

(b) The term "adult education" means the instruction of persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation.

(2) Neither definition may include the instruction in vocational-technical centers.

History: En. 75-7512 by Sec. 383, Ch. 5, L. 1971; amd. Sec. 2, Ch. 290, L. 1977; R.C.M. 1947, 75-7512; amd. Sec. 34, Ch. 658, L. 1987.

Cross-References

ANB defined, 20-1-101.

Calculation of average number belonging (ANB), 20-9-311.

20-7-702. Authorization to establish adult education program. The trustees of any district or community college district may establish and operate an adult education program at any time of the day when facilities and personnel are available. An adult education program may provide both basic and secondary general education, vocational education, American citizenship education, including courses in the English language and American history and government, or any other areas of instruction approved by the trustees.

History: En. 75-7513 by Sec. 384, Ch. 5, L. 1971; R.C.M. 1947, 75-7513.

20-7-703. Trustees' policies for adult education. The trustees shall adopt such policies as are necessary for the supervision and administration of adult education when a program is established in the district.

History: En. 75-7514 by Sec. 385, Ch. 5, L. 1971; R.C.M. 1947, 75-7514.

20-7-704. Adult education tuition and fees. The trustees of a district or community college district shall have the authority to charge tuition for instruction and to charge fees for the use of equipment and materials. The amount of such tuition and fees shall be determined on a per-course basis or on the basis of the cost of the entire adult education program. All proceeds from tuition and fees shall be deposited in the adult education fund.

History: En. 75-7516 by Sec. 387, Ch. 5, L. 1971; R.C.M. 1947, 75-7516.

20-7-705. Adult education fund. (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district that is not unified with an elementary district or of a K-12 school district formed under the provisions of 20-6-701 may authorize a levy of not more than 2 mills on the district, for the operation of an adult education program when the superintendent of public instruction has approved the educational program to be supported by the levy. The trustees shall obtain the approval of the superintendent of public instruction before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for the approval.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the preliminary budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program that has been approved by the superintendent of public instruction is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners on the fourth Monday of August and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

History: En. Secs. 346, 386, Ch. 5, L. 1971; R.C.M. 1947, 75-7207, 75-7515; amd. Sec. 1, Ch. 215, L. 1981; amd. Sec. 9, Ch. 555, L. 1991; amd. Sec. 5, Ch. 568, L. 1991; amd. Sec. 5, Ch. 133, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 133 in (5), near end, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Cross-References

School budgets, Title 20, ch. 9, part 1.

Administration of finances, Title 20, ch. 9, part 2.

20-7-706 through 20-7-710 reserved.

20-7-711. State policy for adult basic education. Affirming that reading, writing, and other basic educational skills are vital for all citizens in modern society, the legislature declares that it is the continuing policy of Montana to encourage adult basic education programs that will develop the full educational potential of each citizen. The legislature recognizes that funds from local, state, and federal sources may be necessary to provide the basic education needed by Montana citizens.

History: En. 75-7514.1 by Sec. 1, Ch. 290, L. 1977; R.C.M. 1947, 75-7514.1.

20-7-712. Adult basic education fund and its distribution. (1) To encourage adult basic education, the legislature may appropriate funds to the superintendent of public instruction for the support of adult basic education programs in any school or community college district.

(2) The superintendent of public instruction shall direct the distribution of funds appropriated by the legislature for adult basic education. The trustees of any district may apply to the superintendent for funds for its adult basic education courses. The financial administration and accounting of adult basic education funds shall be the same as that of adult education.

History: En. 75-7515.1 by Sec. 3, Ch. 290, L. 1977; R.C.M. 1947, 75-7515.1.

Cross-References

School budgets, Title 20, ch. 9, part 1.

Administration of finances, Title 20, ch. 9, part 2.

20-7-713. Adult education fund operating reserve. At the end of each school fiscal year, the trustees of a school district that operates an adult education program may designate the portion of the adult education end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying, whenever a cash flow shortage occurs, adult education fund warrants issued by the district from July 1 through June 30 of the ensuing school fiscal year. The amount of the adult education fund balance that is earmarked as operating reserve may not exceed 35% of the final adult education fund budget for the ensuing school fiscal year.

History: En. Sec. 1, Ch. 120, L. 1981; amd. Sec. 6, Ch. 568, L. 1991; amd. Sec. 6, Ch. 767, L. 1991.

Cross-References

School fiscal year, 20-1-301.

20-7-714. County adult literacy programs — authorization to levy tax and establish fund. (1) (a) The governing body of a county may, in its discretion, establish a fund and levy up to 1 mill on each dollar of taxable property in the county for the support of county literacy programs that give first priority to providing direct instruction to adults. The tax levy is in addition to all other tax levies and is subject to limitations on property taxes set forth in 15-10-402.

(b) The fund may be used only for the support of adult literacy programs within the county.

(2) (a) If a county levies a property tax for adult literacy programs, the county governing body shall appoint a county adult literacy board to administer the expenditure of funds from the county adult literacy fund established in subsection (1).

(b) The county adult literacy board shall coordinate all adult literacy programs receiving county adult literacy funds. The board may adopt policies concerning program standards and financial accountability for organizations receiving adult literacy funds. The board may require that adult literacy programs match adult literacy funds with federal, state, or private money. The board may, with the concurrence of the appropriate county officials, arrange for county in-kind services to support adult literacy programs.

(c) County adult literacy funding may be expended only on literacy programs for persons who are at least 19 years of age and whose high school class has graduated.

History: En. Sec. 1, Ch. 792, L. 1991.

Part 8
Public Recreation

Part Cross-References

Culture, social services, and recreation, Title 7, ch. 16.

Recreation, Title 23, ch. 2.

Footpaths and bicycle trails, Title 60, ch. 3, part 3.

20-7-801. Public recreation program authorized. (1) Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of the city or town for the purpose of operating a program of public recreation and playgrounds and for this purpose may acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program.

History: En. Sec. 1, Ch. 71, L. 1939; R.C.M. 1947, 62-211; amd. Sec. 4, Ch. 384, L. 1979.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

Use of park funds for public recreation, 7-16-4107.

20-7-802. How program operated — independently or cooperatively — delegation. Any city, town, school district, or any board thereof, including a board of park commissioners, may:

(1) (a) operate such a program independently; or

(b) cooperate in its operation and conduct with any other body authorized hereby to conduct such a program and in any manner upon which they may mutually agree; or

(2) delegate the operation of the program to a board of recreation created by any city, town, school district, or any board thereof, including any board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all moneys appropriated for the purposes of such program may be expended by such board.

History: En. Sec. 2, Ch. 71, L. 1939; R.C.M. 1947, 62-212.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

20-7-803. Authority to accept gifts. Any corporation, board, or body hereinbefore designated, given authority to operate and conduct a recreation program or given charge of such program, is authorized to accept gifts and bequests in the name or names of the sponsors of said program, as said sponsors may agree, for the benefit of said recreational work, to employ directors and instructors of said recreational work, and to conduct its activities on:

(1) property under its custody and management;

(2) other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and

(3) private property, with the consent of its owners.

History: En. Sec. 3, Ch. 71, L. 1939; R.C.M. 1947, 62-213.

20-7-804. Authority of board of public education. In all cases where school property is utilized, the board of public education shall have authority:

(1) to establish minimum qualifications of local recreational directors and instructors; and

(2) to prepare or cause to be prepared, published, and distributed adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry on said recreational program and to carry out the provisions of this part.

History: En. Sec. 4, Ch. 71, L. 1939; R.C.M. 1947, 62-214.

20-7-805. Recreational use of school facilities secondary. The facilities of any school district operating a recreational program pursuant to the provisions of this part shall be used primarily for the purpose of conducting a regular school curriculum, and the use of school facilities for recreational purposes authorized by this part shall be secondary.

History: En. Sec. 5, Ch. 71, L. 1939; R.C.M. 1947, 62-215.

Part 9

Gifted and Talented Children

Part Cross-References

Board of Public Education — policies on gifted and talented children, 20-2-121.

20-7-901. Definitions. As used in this part the following definitions apply:

(1) "Gifted and talented children" means children of outstanding abilities who are capable of high performance and require differentiated educational programs beyond those normally offered in public schools in order to fully achieve their potential contribution to self and society. The children so identified include those with demonstrated achievement or potential ability in a variety of worthwhile human endeavors.

(2) "Professionally qualified persons" means teachers, administrators, school psychologists, counselors, curriculum specialists, artists, musicians, and others with special training who are qualified to appraise pupils' special competencies.

History: En Sec. 1, Ch. 310, L. 1979.

20-7-902. School district programs to identify and serve the gifted and talented child. (1) A school district may identify gifted and talented children and devise programs to serve them.

(2) In identifying gifted and talented children, the school district shall:

(a) consult with professionally qualified persons and the parents of children being evaluated;

(b) consider a child's demonstrated or potential gifts or talents; and

(c) use comprehensive and appropriate assessment methods including objective measures and professional assessment measures.

History: En Sec. 2, Ch. 310, L. 1979.

20-7-903. Programs to serve gifted and talented children — compliance with board policy — funding. (1) The conduct of programs to serve gifted and talented children must comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education.

(2) Proposals approved by the superintendent of public instruction in accordance with policies of the board of public education must be funded by money appropriated to the superintendent for that purpose.

(3) A school district shall match funds provided by the superintendent for a gifted and talented children's program with equal funds from other sources. "In kind" contributions may not be used to constitute such a match. Funds must be administered by the school district as provided in 20-9-507.

(4) The superintendent of public instruction may deduct reasonable costs of administration from the funds appropriated for the purposes of this part.

History: En Sec. 3, Ch. 310, L. 1979; amd. Sec. 2, Ch. 312, L. 1983.

20-7-904. Review and recommendations of proposals. (1) The policies of the board of public education must assure that program proposals submitted by school districts to the superintendent of public instruction contain:

(a) evidence that identification procedures are comprehensive and appropriate;

(b) a program description including stated needs and measurable objectives designed to meet those needs;

(c) evidence that the activities are appropriate and will serve to achieve the program objectives; and

(d) a method to evaluate the effectiveness of the program.

(2) School districts may request assistance from the staff of the superintendent in formulating program proposals.

(3) The superintendent of public instruction shall supervise and coordinate the programs for gifted and talented children by:

(a) recommending to the board of public education the adoption of those policies necessary to establish a planned and coordinated program; and

(b) establishing a procedure for review and approval of program proposals.

History: En Sec. 4, Ch. 310, L. 1979; amd. Sec. 3, Ch. 312, L. 1983.

Part 10

Distance Learning
(Repealed Sec. 8, Ch. 622, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections: **20-7-1001.** En. Sec. 52, Ch. 11, Sp. L. June 1989.

Part 11

Earthquake Emergency Procedures

20-7-1101. School district emergency plans in seismic risk zones. (1) School districts in counties within the following seismic risk zones shall establish and implement earthquake emergency plans and procedures as provided in subsections (2) and (3):

(a) seismic risk zone 3, subject to major earthquake damage: Beaverhead, Broadwater, Deer Lodge, Gallatin, Jefferson, Lewis and Clark, Madison, Meagher, Park, Powell, and Silver Bow Counties;

(b) seismic risk zone 2, subject to moderate earthquake damage: Carbon, Cascade, Chouteau, Fergus, Flathead, Glacier, Golden Valley, Granite, Hill, Judith Basin, Lake, Liberty, Lincoln, Mineral, Missoula, Pondera, Ravalli, Sanders, Stillwater, Sweet Grass, Teton, Toole, and Wheatland Counties; and

(c) seismic risk zone 1, subject to minor earthquake damage: Big Horn, Blaine, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Valley, Wibaux, and Yellowstone Counties.

(2) A school district in seismic risk zone 3 shall establish and implement an earthquake emergency plan and procedures, in cooperation with the disaster and emergency services division of the department of military affairs and the superintendent of public instruction, that include:

(a) protective measures to be taken before, during, and following an earthquake;

(b) assurance that the students and staff of the district are aware of and properly trained in earthquake emergency procedures; and

(c) the practice of at least four earthquake drills during the pupil-instruction days of a school fiscal year, including:

(i) practice of the drills at varying times of the school day;

(ii) practice by the staff and students of the proper protective positions; and

(iii) full evacuation of the school at least twice during the pupil-instruction days of a school fiscal year.

(3) School districts in seismic risk zones 1 and 2 are advised to establish and implement earthquake emergency plans and procedures.

(4) The disaster and emergency services division of the department of military affairs and the superintendent of public instruction shall assist the school districts in the state to develop and implement earthquake emergency plans and procedures.

History: En. Sec. 1, Ch. 534, L. 1991.

CHAPTER 8

MONTANA SCHOOL FOR THE DEAF AND BLIND

Part 1 — General Provisions

20-8-101. Montana school for deaf and blind — independent institution.
20-8-102. Objects and purposes — assistance to programs — fee.
20-8-103. Board of public education rules.
20-8-104. Eligibility of children for admittance.
20-8-105. When duty of parent or guardian of child to make application for admission of child — penalty.
20-8-106. Duration of attendance at school — transfer.
20-8-107. Admission of nonresident children and advance payment of cost — Indian children.
20-8-108. Provisions for indigent students.
20-8-109. Time of regular school term.
20-8-110. Property vested in school.
20-8-111. Duty of board of public education as to property of school.
20-8-112. Expenditure of school moneys.
20-8-113. Duties of superintendent of school for the deaf and blind.
20-8-114. Repealed.
20-8-115. Repealed.
20-8-116. Employment placement — continuing education.
20-8-117. Repealed.
20-8-118. Repealed.
20-8-119. Repealed.
20-8-120. Communications skills required of certain employees.
20-8-121. Transportation of students at school.

Chapter Cross-References

Application of statewide classification and pay plan to school employees, 2-18-103.

Attendance of pupils at schools, Title 20, ch. 5, part 1.

Rights of the handicapped, Title 49, ch. 4.

Developmentally disabled, Title 53, ch. 20.

Part 1

General Provisions

20-8-101. Montana school for deaf and blind — independent institution. The school for the deaf and blind, formerly located at Boulder in connection with the Montana state training school but transferred before July 1, 1943, to the city of Great Falls, shall be known and designated as the Montana school for the deaf and blind and shall be conducted as a separate and independent unit and institution of the state of Montana under the general supervision, direction, and control of the board of public education. However, the transfer of that school or any change in the name thereof or in the objects or purposes thereof may not be considered or construed to impair or work any forfeiture or alteration of any rights, grants, or property made to or acquired by that school or by the state for the use and benefit of that school prior to July 1, 1943.

History: En. Sec. 1, Ch. 182, L. 1943; amd. Sec. 39, Ch. 266, L. 1977; R.C.M. 1947, 80-102; amd. Sec. 1, Ch. 151, L. 1983.

Cross-References

Board of Public Education, Title 20, ch. 2, part 1.

20-8-102. Objects and purposes — assistance to programs — fee. (1) The Montana school for the deaf and blind is a residential and day school for children and adolescents who are deaf or blind or whose hearing or sight is so defective that they cannot be successfully taught and are unable to receive a sufficient or proper education in the public schools of the state.

(2) The school shall serve as a consultative resource for parents of hearing impaired and visually impaired children not yet enrolled in an educational program and for public schools of the state where hearing impaired or visually impaired children are enrolled. The school upon request shall ensure that services and programs for hearing impaired or visually impaired children are appropriate and sufficient. The school may provide assistance to the programs that the school determines is needed. The school shall collect a reasonable fee for the assistance from the public school or other responsible agency receiving the assistance. The fee must be in an amount sufficient to cover the cost of services provided.

(3) The object and purpose of the school is to furnish and provide, by the use of specialized methods and systems, an education for the hearing impaired and visually impaired children of this state that is commensurate with the education provided to nonhandicapped children in the public schools and that will enable children being served by the school to become independent and self-sustaining citizens.

History: En. Sec. 2, Ch. 182, L. 1943; re-en. Sec. 1, Ch. 169, L. 1949; R.C.M. 1947, 80-103; amd. Sec. 2, Ch. 151, L. 1983; amd. Sec. 1, Ch. 392, L. 1989; amd. Sec. 1, Ch. 537, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 537 in (2) inserted second through fourth sentences regarding programs for hearing and visually impaired children and fees for services; and made minor changes in style. Amendment effective July 1, 1993.

20-8-103. Board of public education rules. The board of public education shall adopt and prescribe rules as the board considers necessary and proper for the maintenance and government of the school, the admission of children in conformity with the provisions of this chapter, and the qualifications and compensation of the superintendent and teaching staff of the school, provided that the superintendent must have a ready and working knowledge of the sign language.

History: En. Sec. 3, Ch. 182, L. 1943; R.C.M. 1947, 80-104; amd. Sec. 2, Ch. 392, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

20-8-104. Eligibility of children for admittance. On proper application being made therefor, as prescribed by the rules of the board of public education, deaf and blind children who are not more than 18 years of age residing within the state of Montana and nonresident children who are not more than 18 years of age, who are not mentally deficient, dangerously diseased in body, or of confirmed immorality or incapacitated for useful instruction by reason of physical disability may be admitted to such school.

History: En. Sec. 4, Ch. 182, L. 1943; amd. Sec. 1, Ch. 282, L. 1967; R.C.M. 1947, 80-105; amd. Sec. 3, Ch. 151, L. 1983.

20-8-105. When duty of parent or guardian of child to make application for admission of child — penalty. (1) Every parent, guardian, or other person having the custody or control of any child between the ages of 5 and 18 years whose hearing or sight is so defective that such child cannot be properly educated in the public schools of the state shall make application to the superintendent of said school for admission to such school for at least 9 months during each school year for a period of 10 years, unless such child is being taught in a private school or in a similar institution in another state which affords such child an education to the same extent as such child can receive in the Montana school for the deaf and blind or unless such child be found, for any reason, to be ineligible to admission to such school. If such child is being taught in a private school or in a similar institution in another state, such attendance must be for at least 9 months in each year for 10 years, unless such child shall arrive at the age of 18 years or shall have become self-sustaining before the expiration of such 10-year period.

(2) The failure of any parent, guardian, or other person having the custody or control of any blind or deaf child to comply with the provisions of this section shall be deemed a misdemeanor and punishable by a fine of not less than $5 or more than $25 for the first offense and not less than $25 or more than $50 for each subsequent offense. Upon conviction of any parent, guardian, or person having custody or control of any such child of a failure to comply with the provisions of this section, the court in which such conviction is had shall enter in its docket an order directing such parent, guardian, or other person to comply with the provisions of this section within 10 days thereafter and shall deliver a copy of such order to such parent, guardian, or other person.

History: En. Sec. 5, Ch. 182, L. 1943; R.C.M. 1947, 80-106; amd. Sec. 4, Ch. 151, L. 1983.

Cross-References

Contempts, Title 3, ch. 1, part 5.

20-8-106. Duration of attendance at school — transfer. (1) Every child admitted to such school shall be entitled to attend such school until reaching the age of 21 years unless the board of public education and superintendent determine that attendance at the school will not benefit the child, provided that nothing in this section shall be construed so as to prevent the suspension or expulsion of any child at any time for insubordination or other cause deemed good and sufficient by the board of public education and superintendent.

(2) Transfer of a student from the school to another educational placement must be in accordance with rules of the board of public education.

History: En. Sec. 6, Ch. 182, L. 1943; amd. Sec. 2, Ch. 282, L. 1967; R.C.M. 1947, 80-107; amd. Sec. 5, Ch. 151, L. 1983.

20-8-107. Admission of nonresident children and advance payment of cost — Indian children. (1) Deaf and blind children who are not residents of the state of Montana, upon application being made therefor, may be admitted to the school, subject to all eligibility requirements prescribed for children who are residents of the state, provided that for each such nonresident child there shall be paid to the school in advance a sum of money the amount of which shall be determined by a careful estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application, and provided further that no nonresident child shall be admitted to the school except when the full capacity thereof is not required for children who are residents of the state.

(2) Indian children who are Montana residents and wards of the United States shall be eligible to and shall be admitted to such school on the same terms as residents.

History: En. Sec. 7, Ch. 182, L. 1943; amd. Sec. 1, Ch. 194, L. 1953; amd. Sec. 1, Ch. 182, L. 1957; R.C.M. 1947, 80-108; amd. Sec. 6, Ch. 151, L. 1983.

Cross-References

Rules for determining residence, 1-1-215.

20-8-108. Provisions for indigent students. In all cases where a person to be sent to said school is too poor to pay for necessary clothing and transportation, the judge of the district court of the district where such person resides, upon application of any relative or friend or of any officer of the county where said person resides, shall, if he deem the person a proper subject, make an order to that effect which shall be certified by the clerk of the court to the superintendent of said school, who shall then provide the necessary clothing and transportation at the expense of the county and, upon his rendering his proper accounts therefor quarter-annually, the county commissioners shall allow and pay the same out of the county treasury.

History: En. Sec. 2344, Pol. C. 1895; re-en. Sec. 1170, Rev. C. 1907; re-en. Sec. 1463, R.C.M. 1921; Cal. Pol. C. Sec. 2240; re-en. Sec. 1463, R.C.M. 1935; R.C.M. 1947, 80-109.

20-8-109. Time of regular school term. The regular term of school shall be as provided in 20-1-301.

History: En. Sec. 9, Ch. 182, L. 1943; R.C.M. 1947, 80-111; amd. Sec. 7, Ch. 151, L. 1983.

20-8-110. Property vested in school. All lands heretofore granted by the government of the United States to the state of Montana for the use and benefit of the deaf and dumb are hereby set apart and declared to be for the use and benefit in perpetuity of the Montana school for the deaf and blind, and all funds arising from the sale or leasing of said lands, or any part or portion thereof, shall be applied to the proper use and benefit thereof and shall vest in the state of Montana for the use and benefit thereof.

History: En. Sec. 11, Ch. 182, L. 1943; R.C.M. 1947, 80-113; amd. Sec. 8, Ch. 151, L. 1983.

20-8-111. Duty of board of public education as to property of school. The board of public education has a statutory appropriation, as provided in 17-7-502, and shall, either directly or through a contract with a nonprofit corporation, receive, hold, manage, use, and dispose of real and personal property made over to such board or to the state of Montana by purchase, gift, devise, bequest, or otherwise acquired and the proceeds, interest, and income thereof for the use and benefit of said school. All donations, gifts, devises, or grants made before, on, or after October 1, 1983, to the school shall vest in the board or its designee, as trustee for the state of Montana, for the use and benefit of the school and its students.

History: En. Sec. 12, Ch. 182, L. 1943; R.C.M. 1947, 80-114; amd. Sec. 9, Ch. 151, L. 1983; amd. Sec. 31, Ch. 703, L. 1985.

20-8-112. Expenditure of school moneys. No moneys belonging to the deaf and blind school fund shall be expended for any purpose other than for the Montana school for the deaf and blind, and any moneys belonging to any fund or funds which may be hereafter created for such school shall be expended for the express purpose designated in the act or acts creating such fund or funds and for no other purpose.

History: En. Sec. 14, Ch. 182, L. 1943; R.C.M. 1947, 80-116; amd. Sec. 10, Ch. 151, L. 1983.

20-8-113. Duties of superintendent of school for the deaf and blind. The superintendent of the Montana school for the deaf and blind shall:

(1) administer the programs and functions of the school within the guidelines of statutes and under policies prescribed by the board of public education;

(2) prepare and submit reports, summaries, and other information requested by the board;

(3) establish and pursue professional and technical contacts that will contribute information and guidance toward effective and efficient operation of the school;

(4) maintain effective liaison between the school, the superintendent of public instruction, local school districts, and other public and private agencies that have an interest in or influence upon the school;

(5) pursue a program of information for parents, professionals, and the general public.

History: En. Sec. 1, Ch. 189, L. 1945; R.C.M. 1947, 80-117; amd. Sec. 11, Ch. 151, L. 1983.

20-8-114. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 2, Ch. 189, L. 1945; R.C.M. 1947, 80-118.

20-8-115. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 3, Ch. 189, L. 1945; R.C.M. 1947, 80-119.

20-8-116. Employment placement — continuing education. (1) The superintendent shall gather and record data and statistics to help him locate suitable employment for blind, deaf, and hard-of-hearing persons not in attendance at said school or for those who have been trained by the department of social and rehabilitation services when it so requests such assistance. He shall consult with various county, state, and federal agencies and with the department of social and rehabilitation services to secure employment for self-sustaining persons. He shall coordinate his work with such federal agencies as social security and reemployment for those out of work, as required by this part.

(2) The superintendent may, within funding limitations, develop and offer continuing education programs of a vocational nature for the visually impaired and hearing impaired that use the campus and facilities of the school during the summer months and other times when the school's facilities are not being used by its students.

History: En. Sec. 4, Ch. 189, L. 1945; R.C.M. 1947, 80-120; amd. Sec. 12, Ch. 151, L. 1983.

20-8-117. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 5, Ch. 189, L. 1945; R.C.M. 1947, 80-121.

20-8-118. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 6, Ch. 189, L. 1945; R.C.M. 1947, 80-122.

20-8-119. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 7, Ch. 189, L. 1945; R.C.M. 1947, 80-123.

20-8-120. Communications skills required of certain employees. (1) Each permanent employee of the school who works with deaf children or works for or with a fellow employee who is deaf must acquire acceptable total communications skills as prescribed by the board of public education by the end of his first year of employment.

(2) Upon request to the board of public education by the superintendent, an exception to this requirement may be made for an employee not working directly with deaf children.

History: En. Sec. 13, Ch. 151, L. 1983.

20-8-121. Transportation of students at school. (1) The school for the deaf and blind shall provide the transportation expenses allowed in subsection (4) for a residential student at the school for the deaf and blind who is a resident of the state of Montana if the student is conveyed to and from the student's residence by:

(a) a scheduled air carrier as defined in 67-1-101;

(b) charter with a commercial air operator as defined in 67-1-101;

(c) a parent or guardian of the student, under an individual transportation contract with the school for the deaf and blind; or

(d) other transportation arrangements, provided that the transportation is by a carrier of passengers certified by the public service commission and approved by the superintendent of the school for the deaf and blind, pursuant to rules adopted by the board of public education.

(2) The superintendent of the school for the deaf and blind shall determine which method of transportation in subsection (1) is to be provided to a student, pursuant to rules adopted by the board of public education on transportation of residential and boarding students at the school.

(3) A parent or guardian who transports a student to or from the school under an individual transportation contract is entitled to reimbursement for transportation, pursuant to rules adopted by the board of public education on reimbursement.

(4) The transportation of a residential student provided in subsection (1) is limited to the number of round trips to the student's residence as specified in the school calendar approved by the board of public education. The superintendent of the school for the deaf and blind may grant a variance from this provision, but in no event may a reimbursement for travel expenses be provided for travel in excess of the total number of trips approved in any school fiscal year.

History: En. Sec. 1, Ch. 396, L. 1987; amd. Sec. 3, Ch. 392, L. 1989.

CHAPTER 9

FINANCE

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Chapter Cross-References

Appropriations for public schools, Art. V, sec. 11, Mont. Const.

School district property — exemption from taxation, Art. VIII, sec. 5, Mont. Const.

Investment of public school fund, Art. VIII, sec. 13, Mont. Const.

Public school fund constitutional provisions, Art. X, sec. 2, 3, 5, Mont. Const.

Aid to sectarian schools prohibited, Art. X, sec. 6, Mont. Const.

Statutes imposing new duties on a school district to provide a means of financing, 1-2-113.

School district tax and revenue anticipation notes, Title 7, ch. 6, part 11.

Investment of local government funds, 17-6-204.

Part 1
School Budgets

20-9-101. Application of budget system for districts. The school budgeting procedure and provisions of this title apply to elementary and high school districts and, whenever specified, to community college districts and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this title.

History: En. 75-6701 by Sec. 207, Ch. 5, L. 1971; amd. Sec. 14, Ch. 266, L. 1977; R.C.M. 1947, 75-6701; amd. Sec. 16, Ch. 392, L. 1979.

Cross-References

Definition of elementary and high school districts, 20-6-101.

Definition of community college districts, 20-15-101.

20-9-102. General supervision of school budgeting system. The superintendent of public instruction has general supervision over the school budgeting procedure and provisions, as they relate to elementary and high school districts, prescribed by law and shall establish such rules as are necessary to secure compliance with the school budgeting laws.

History: En. 75-6702 by Sec. 208, Ch. 5, L. 1971; amd. Sec. 15, Ch. 266, L. 1977; R.C.M. 1947, 75-6702.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Powers and duties of Superintendent of Public Instruction, 20-3-106.

20-9-103. School budget form. (1) The format of the school budget form shall be prescribed by the superintendent of public instruction and shall provide for proper school budgeting procedures in accordance with the budgeting requirements of this title and generally accepted accounting principles. The superintendent of public instruction shall cause a sufficient number of the budget forms to be printed for use by all districts for each school fiscal year.

(2) Each district shall use the budget forms prescribed by the superintendent of public instruction, except that a district may in addition, with the approval of the superintendent of public instruction, use a more detailed form.

History: En. 75-6704 by Sec. 210, Ch. 5, L. 1971; R.C.M. 1947, 75-6704; amd. Sec. 3, Ch. 35, L. 1989.

20-9-104. General fund operating reserve. (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional

levy provided by 20-9-353, except that districts with a balance on June 30, 1993, in the excess reserve account for Public Law 81-874 funds shall transfer the June 30, 1993, balance to the impact aid fund established in 20-9-514.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b)(iii).

(5) For fiscal year 1994 and subsequent fiscal years, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than one or more of the following:

(a) the unused balance of any amount received:

(i) in settlement of tax payments protested in a prior school fiscal year;

(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(iii) in delinquent taxes from a prior school fiscal year; or

(b) any amount received as a general bonus payment under 20-6-401.

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less.

History: En. 75-6924 by Sec. 274, Ch. 5, L. 1971; R.C.M. 1947, 75-6924; amd. Sec. 20, Ch. 11, Sp. L. June 1989; amd. Sec. 7, Ch. 767, L. 1991; amd. Secs. 2, 12, Ch. 6, Sp. L. July 1992; amd. Sec. 11, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (1), in second sentence after "(5)", substituted "and (6)" for "through (7)"; in (3) substituted "BASE budget levy, the over-BASE budget levy, or the additional" for "permissive levy provided by 20-9-145 or to reduce the voted" and after "20-9-353" inserted exception clause; deleted former (5)(a) providing that limitation is not applicable to "any amount received under Public Law 81-874"; and deleted (7) that read: "(7) For fiscal year 1993, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the amounts identified by a school district as one or more of the following:

(a) any amount received under Public Law 81-874;

(b) the unused balance of any amount received:

(i) in settlement of tax payments protested in a prior school fiscal year;

(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(iii) in delinquent taxes from a prior school fiscal year; or

(c) any amount received as a general bonus payment under 20-6-401." Amendment effective July 1, 1993.

Effective Date — Retroactive Applicability: Section 59(2), Ch. 633, L. 1993, provided: "(2) [Section 11] [20-9-104] is effective July 1, 1993, and the provisions of [section 11(3)] [20-9-104(3)] relating to excess reserves and Public Law 81-874 money apply retroactively, within the meaning of 1-2-109, to district general fund reserves for the school fiscal year beginning July 1, 1992."

20-9-105. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 1, Ch. 121, L. 1981.

20-9-106 through 20-9-110 reserved.

20-9-111. Repealed. Sec. 56, Ch. 767, L. 1991.

History: En. 75-6705 by Sec. 211, Ch. 5, L. 1971; R.C.M. 1947, 75-6705; amd. Sec. 4, Ch. 35, L. 1989.

20-9-112. Repealed. Sec. 4, Ch. 183, L. 1983.

History: En. 75-6706 by Sec. 212, Ch. 5, L. 1971; R.C.M. 1947, 75-6706; amd. Sec. 17, Ch. 392, L. 1979.

20-9-113. Preparation and adoption of preliminary budget by trustees. (1) The trustees of a district shall meet at their regular place of meeting at any time from February 1 through the fourth Monday in June, at the discretion of the board, to adopt a preliminary budget for the next ensuing school fiscal year. This budget meeting may be continued from day to day but may not exceed 5 days in total. Any taxpayer in the district may attend the meeting and be heard in regard to the preliminary budget or any item or amount proposed to be included in the budget. The preliminary budget must include all funds that require the adoption of a budget and that the trustees wish to utilize during the ensuing year.

(2) The proposed expenditures adopted as the preliminary budget must be entered on the appropriate portion of the budget form. The amount of the preliminary general fund budget for a district may not exceed the maximum general fund budget for the district except in the manner permitted by the laws of Montana. If any appropriation item of the preliminary budget provides for the payment of wages or salaries to more than one person, the district shall attach to the preliminary budget a separate listing of each position of employment with the budgeted amount of compensation for each position.

(3) After the adoption of the preliminary budget by the trustees, the presiding officer of the trustees and the clerk of the district shall sign the budget form, and it shall constitute the preliminary budget for the district. The trustees shall send both copies of the adopted preliminary budget, with all appendages and any other information required by law, to the county superintendent on or before the fifth day after the fourth Monday of June.

(4) At least 2 weeks before the first meeting day on adoption of a preliminary budget for the ensuing school fiscal year, as required by this section, the trustees of a district shall publish a notice of the meeting at least one time in a newspaper of general circulation in the district. The notice must state that any taxpayer in the district may attend the meeting and be heard on the preliminary budget.

History: En. 75-6707 by Sec. 213, Ch. 5, L. 1971; R.C.M. 1947, 75-6707; amd. Sec. 1, Ch. 183, L. 1983; (4)En. Sec. 2, Ch. 183, L. 1983; amd. Sec. 12, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (2), in second sentence, substituted "maximum general fund budget for the" for "foundation program of such"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

Meetings and quorum, 20-3-322.

Adult education program to be included in preliminary budget, 20-7-705.

Transportation fund budget to be included in preliminary budget, 20-10-143.

20-9-114. Preparation of preliminary budget by county superintendent if no budget submitted. If for any reason the trustees of any district fail to prepare and submit a preliminary budget to the county superintendent before July 10, the county superintendent shall prepare a preliminary budget for the district in the manner provided by law and shall note on the budget form the specific reasons why he has prepared it. For all purposes thereafter, such preliminary budget shall be considered to have been adopted by the trustees of the district in the regular manner.

History: En. 75-6708 by Sec. 214, Ch. 5, L. 1971; R.C.M. 1947, 75-6708.

20-9-115. Notice of preliminary budget filing and final budget meeting. Between July 10 and July 20 of each year, the clerk of each district shall publish notice one time, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in his office and open to inspection by all taxpayers. The notice must also state the time and place that the trustees will meet on the fourth Monday in July for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget.

History: En. 75-6709 by Sec. 215, Ch. 5, L. 1971; amd. Sec. 5, Ch. 277, L. 1977; amd. Sec. 1, Ch. 354, L. 1977; R.C.M. 1947, 75-6709; amd. Sec. 1, Ch. 131, L. 1979; amd. Sec. 31, Ch. 581, L. 1979; amd. Sec. 1, Ch. 77, L. 1989.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

20-9-116 through 20-9-120 reserved.

20-9-121. County treasurer's statement of cash balances and bond information. (1) By July 10, the county treasurer shall prepare a statement for each district showing the amount of cash on hand for each fund maintained by the district and the amount of the outstanding obligations against each fund at the close of the last completed school fiscal year. The county treasurer shall also include on each district's statement the details on the obligation for bond retirement and interest for the school fiscal year just beginning. The format of the statement on fund cash balances and bond information shall be prescribed by the superintendent of public instruction.

(2) By July 10, the county treasurer shall prepare a statement for each county school fund supported by countywide levies, showing the amount of cash on hand at the beginning of the school fiscal year, the receipts and apportionments, and the amount of cash on hand at the end of the school fiscal year, for each county school fund maintained during the immediately preceding school fiscal year. The format of this statement shall be prescribed by the superintendent of public instruction.

(3) On or before July 10, the county treasurer shall deliver the statements of district and county fund cash balances and the bond information for each district to the county superintendent who shall attach such district statements to the applicable district's preliminary budget.

History: En. 75-6710 by Sec. 216, Ch. 5, L. 1971; R.C.M. 1947, 75-6710.

Cross-References

School fiscal year, 20-1-301.

Payment of debt service obligations, 20-9-440.

Redemption of bonds, 20-9-441.

20-9-122. Statement of district, city, and town valuations. (1) By the second Monday of July, the department of revenue or its agent in each county shall, at the time of delivering the completed assessment book to the county clerk under the provisions of 15-8-705, also deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in his county the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in such completed assessment book.

(2) The county clerk shall, after the second Monday in August and before or at the time of delivering the assessment book to the department of revenue or its agent under the provisions of 15-10-306, prepare a statement showing separately for each district and each city or town in his county the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in the assessment book after amendments, corrections, and additions made by the state and county tax appeal boards and entered on the assessment book. The county clerk shall immediately deliver a copy of his statement of assessed and taxable values for districts to the county superintendent and a copy of those portions of such statement for each city and town to the appropriate city or town clerk.

(3) In the case of a joint school district, the department of revenue or its agent and the county clerk shall, at the time of delivering their respective statements to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in their county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated.

History: En. 75-6711 by Sec. 217, Ch. 5, L. 1971; amd. Sec. 51, Ch. 391, L. 1973; R.C.M. 1947, 75-6711.

Cross-References

Assessment and map books, Title 15, ch. 8, part 7.

Entry of taxes, Title 15, ch. 10, part 3.

20-9-123. County superintendent's estimates of revenue and supply of other financial and statistical information. Before the fourth Monday of July, the county superintendent shall prepare estimates of the revenue available to finance each fund included on each district's preliminary budget. The preliminary budget revenue estimates shall be entered by the county superintendent in the appropriate portion of the form. The county superintendent shall also enter any other financial and statistical information which is necessary for the completion of the budget form and which is available prior to the fourth Monday of July.

History: En. 75-6712 by Sec. 218, Ch. 5, L. 1971; R.C.M. 1947, 75-6712.

Cross-References

County Superintendent to compute revenues for transportation fund budget, 20-10-144.

20-9-124 through 20-9-130 reserved.

20-9-131. Final budget meeting. (1) On the second Monday in August, at the time and place noticed pursuant to 20-9-115, the trustees of each district shall meet to consider the preliminary budget submitted to or prepared by the county superintendent, including all information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district not later than the fourth Monday in August and before the fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of the district or on any item or amount contained in the budget.

History: En. 75-6713 by Sec. 219, Ch. 5, L. 1971; amd. Sec. 6, Ch. 277, L. 1977; R.C.M. 1947, 75-6713; amd. Sec. 2, Ch. 131, L. 1979; amd. Sec. 1, Ch. 133, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 133 in (1) substituted reference to second Monday of August for reference to fourth Monday of July; in (2) substituted reference to fourth Monday of August for reference to second Monday of August; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

Meetings and quorum, 20-3-322.

20-9-132. Final budget adjustment procedures. At the final budget meeting of the trustees, they shall have the power to make any changes or corrections they may deem necessary or proper in any item or amount of the preliminary budget either by eliminating the item or amount or by increasing or reducing the amount of any item. When it appears to the trustees that the amount proposed to be expended for any item of the preliminary budget is in excess of the amount actually required to be expended for such item, the trustees shall reduce such amount to the amount actually required to be expended and shall enter in its minutes the reasons for such reduction.

History: En. 75-6714 by Sec. 220, Ch. 5, L. 1971; amd. Sec. 7, Ch. 277, L. 1977; R.C.M. 1947, 75-6714.

20-9-133. Adoption and expenditure limitations of final budget. (1) When the trustees determine and set the amount of the budget for each budgeted fund, they shall enter the amount in the portion of the budget form provided for the reporting of the final budget and the chairman and clerk shall sign the budget form. The resulting budget constitutes the final budget and the appropriations for the district for the current school fiscal year.

(2) Except as provided in subsection (3), the trustees and all officers and employees of the district are limited in making expenditures or incurring liabilities to the total amount of each fund's budget. Transfers from any appropriation item to another appropriation item within a fund's budget may be made as provided by 20-9-208. Except as provided in subsection (3), money of the district may not be used to pay expenditures made, liabilities incurred, or warrants issued in excess of the final budget established for each budgeted fund.

(3) If a district incurs a legal bonded debt payment after the final debt service fund budget for the current fiscal year has been adopted and if payment on the debt is required for the current fiscal year, payment on the debt in the current school fiscal year is allowed if money is available.

History: En. 75-6716 by Sec. 222, Ch. 5, L. 1971; amd. Sec. 8, Ch. 277, L. 1977; R.C.M. 1947, 75-6716; amd. Sec. 1, Ch. 222, L. 1987; amd. Sec. 7, Ch. 568, L. 1991.

Cross-References

Personal liability of trustees, 20-3-332.

Authorization to lease land as obligation of final budget, 20-6-625.

20-9-134. Completion, filing, and delivery of final budgets. After the final budget of the elementary, high school, or community college district has been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

(1) send the final budget information to the superintendent of public instruction, on the forms provided by the superintendent, on or before September 1;

(2) in the case of the community college districts, send the final budget information to the board of regents, on the forms provided by the community college coordinator, on or before September 1; and

(3) deliver a copy of the final budget for the district to the county treasurer on or before September 1.

History: En. 75-6719 by Sec. 225, Ch. 5, L. 1971; amd. Sec. 10, Ch. 277, L. 1977; R.C.M. 1947, 75-6719; amd. Sec. 18, Ch. 392, L. 1979.

20-9-135 through 20-9-140 reserved.

20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) general fund balance reappropriated, as established under the provisions of 20-9-104; and

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following sources:

(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323;

(B) revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(C) net proceeds taxes for new production, as defined in 15-23-601;

(D) revenue from local government severance taxes as provided in 15-36-112;

(E) revenue from coal gross proceeds under 15-23-703;

(F) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(G) revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(H) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

History: En. 75-6926 by Sec. 276, Ch. 5, L. 1971; R.C.M. 1947, 75-6926; amd. Sec. 1, Ch. 699, L. 1983; amd. Sec. 1, Ch. 110, L. 1985; amd. Sec. 1, Ch. 265, L. 1985; amd. Sec. 12, Ch. 695, L. 1985; amd. Sec. 15, Ch. 611, L. 1987; amd. Sec. 19, Ch. 655, L. 1987; amd. Sec. 5, Ch. 35, L. 1989; amd. Secs. 21, 83, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 267, L. 1991; amd. Sec. 8, Ch. 767, L. 1991; amd. Sec. 6, Ch. 133, L. 1993; amd. Sec. 2, Ch. 325, L. 1993; amd. Sec. 14, Ch. 563, L. 1993; amd. Sec. 13, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 133 in (3), near middle, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 325 deleted former (1)(b)(iv) that read: "anticipated or reappropriated state impact aid received under the provisions of 20-9-304". Amendment effective July 1, 1993.

Chapter 563 at end of (1)(b)(ii)(A) substituted "20-5-321 through 20-5-323" for "20-5-303, 20-5-307, 20-5-312, and 20-5-313".

Chapter 633 in (1)(a) substituted "sum of direct state aid and the special education allowable cost payment for the district" for "amount established by the schedules in 20-9-316 through 20-9-321"; in (1)(a)(i) substituted "BASE budget" for "foundation program"; in (1)(a)(ii) and (1)(c), before "general fund", deleted "additional"; in (1)(a)(ii), after "provisions of", substituted "20-9-308" for "20-9-145" and substituted "funding for a general fund budget that exceeds the maximum general fund budget" for "levies authorized by the electors of the district"; substituted (1)(b)(i) and (1)(b)(ii) concerning determining property tax reduction for former language that read: "(i) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund balance reappropriated, as established under the provisions of 20-9-104"; in (1)(b)(ii)(B), at beginning, deleted "anticipated or reappropriated"; in (1)(b)(ii)(C), (1)(b)(ii)(D), (1)(b)(ii)(E), and (1)(b)(ii)(G), at beginning, deleted "anticipated"; in (1)(b)(ii)(F), before "interest", deleted "anticipated interest to be earned or reappropriated"; in (1)(b)(ii)(H), after "revenue", deleted "anticipated by the trustees to be" and before "school" deleted "ensuing"; in (1)(c), after "district", substituted "up to the BASE budget amount" for "as the permissive amount under the provisions of 20-9-145" and before "levy" substituted "BASE budget" for "permissive net"; in (1)(d), after "met by", inserted "an over-BASE budget amount", before "20-9-353" inserted "any additional financing as provided in", and after "determine" substituted "any" for "the"; in (2), after "general fund", deleted "permissive net" and after "requirement" inserted "for any amount that does not exceed the BASE budget amount for the district"; in (3), before "general fund", deleted "general fund permissive net levy requirement and the additional" and after "general fund" inserted "net"; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Cross-References

Computation of revenues and net tax levy requirements for the transportation fund budget, 20-10-144.

20-9-142. Fixing and levying taxes by board of county commissioners. On the fourth Monday in August, the county superintendent shall place before the board of county commissioners the final adopted budget of the district. It is the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget.

History: En. 75-6717 by Sec. 223, Ch. 5, L. 1971; amd. Sec. 9, Ch. 277, L. 1977; R.C.M. 1947, 75-6717; amd. Sec. 3, Ch. 726, L. 1985; amd. Sec. 6, Ch. 26, Sp. L. June 1986; amd. Sec. 9, Ch. 767, L. 1991; amd. Sec. 7, Ch. 133, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 133 at beginning substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Cross-References

Property tax levies, Title 15, ch. 10.

Boundary change — effect on property tax valuation, 20-6-412.

Adult education fund levy, 20-7-705.

Bus depreciation reserve fund, 20-10-147.

Additional levy by school district — procedure, 20-16-207.

20-9-143. Allocation of federal funds in lieu of property taxation. Federal funds received by a district under the provisions of Title I of Public Law 81-874 or funds designated in lieu of such federal act by the congress of the United States must be deposited in the impact aid fund established in 20-9-514.

History: En. 75-6718 by Sec. 224, Ch. 5, L. 1971; R.C.M. 1947, 75-6718; amd. Sec. 14, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 after "United States" substituted "must be deposited in the impact aid fund established in 20-9-514" for "may be allocated to the various operating budgets of the district by the trustees". Amendment effective July 1, 1993.

Cross-References

Power to accept gifts, 20-6-601.

Allocation of federal funds to school food service, 20-10-204, 20-10-205.

20-9-144 reserved.

20-9-145. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. Sec. 101, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 767, L. 1991.

20-9-146 reserved.

20-9-147. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. Sec. 50, Ch. 767, L. 1991; amd. Sec. 3, Ch. 466, L. 1993.

20-9-148 through 20-9-150 reserved.

20-9-151. Budgeting procedure for joint districts. (1) The trustees of a joint district shall adopt a budget according to the school budgeting laws and send a copy of such budget to the county superintendent of each county in which a part of the joint district is located. After approval by the trustees of the joint district the final budgets of joint districts shall be filed in the office of the county superintendent of each county in which a part of a joint district is located.

(2) The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget revenues and determine the

number of mills which need to be levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of revenues and determination of the tax levies.

(3) After determining, in accordance with law, the number of mills which need to be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies shall be prepared and signed by the county superintendents involved in the computation. A copy of the statement shall be delivered to the board of county commissioners of each county in which a part of the joint district is located not later than the Friday immediately preceding the second Monday in August.

History: Ap. p. 75-6721 by Sec. 227, Ch. 5, L. 1971; amd. Sec. 12, Ch. 277, L. 1977; Sec. 75-6721, R.C.M. 1947; Ap. p. 75-6720 by Sec. 226, Ch. 5, L. 1971; amd. Sec. 11, Ch. 277, L. 1977; Sec. 75-6720, R.C.M. 1947; R.C.M. 1947, 75-6720, 75-6721.

20-9-152. Fixing and levying taxes for joint districts. (1) At the time of fixing levies for county and school purposes on the second Monday in August, the board of county commissioners of each county in which a part of a joint district is located shall fix and levy taxes on that portion of the joint district located in such board's county at the number of mills for each such levy recommended by the joint statement of the county superintendents.

(2) The board of county commissioners shall include in the amounts to be raised by the county levies for schools all the amounts required for the final budget of each part of a joint district located in the county, in accordance with the recommendations of the county superintendent.

History: En. 75-6722 by Sec. 228, Ch. 5, L. 1971; R.C.M. 1947, 75-6722.

Cross-References

Property tax levies, Title 15, ch. 10.

20-9-153 through 20-9-160 reserved.

20-9-161. Definition of budget amendment for budgeting purposes. As used in this title, unless the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting means an amendment to an adopted budget of the district for the following reasons:

(1) an increase in the enrollment of an elementary or high school district that is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the current school fiscal year whenever, because of the enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit for its present school use;

(3) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district;

(5) the receipt of:

(a) a settlement of taxes protested in a prior school fiscal year; or

(b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue or its agents; or

(c) delinquent taxes from a prior school fiscal year; and

(d) a determination by the trustees that it is necessary to expend all or a portion of the taxes received under subsection (5)(a), (5)(b), or (5)(c) for a project or projects that were deferred from a previous budget of the district as a result of the protested taxes; or

(6) any other unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting the safety of the students and district employees or the educational functions of the district.

History: En. 75-6723 by Sec. 229, Ch. 5, L. 1971; R.C.M. 1947, 75-6723; amd. Sec. 19, Ch. 392, L. 1979; amd. Sec. 11, Ch. 767, L. 1991.

Cross-References

Statutes imposing new duties on a school district to provide a means of financing, 1-2-113.

Liability exposure and insurance coverage, Title 2, ch. 9.

Disaster and emergency services, Title 10, ch. 3.

20-9-162. Authorization for budget amendment adoption. (1) (a) Notwithstanding the provisions of subsections (2) and (3), a budget amendment may be adopted at any time of the school fiscal year, except that a budget amendment required by an enrollment increase as provided in 20-9-161(1) may not be adopted until after October 1.

(b) The trustees may approve a budget amendment pursuant to 20-9-161(2) through (6) by a resolution.

(c) Whenever the trustees of a district decide that a budget amendment is necessary, they may proclaim the need for the budget amendment by a majority vote of the trustees. The proclamation must state the facts constituting the need for the budget amendment, the funds affected by the budget amendment, the anticipated source of financing, the estimated amount of money required to finance the budget amendment, and the time and place the trustees will meet for the purpose of considering and adopting the budget amendment for the current school fiscal year.

(2) The trustees shall send a copy of the proclamation to the county superintendent and to the board of county commissioners of the county.

(3) The trustees shall submit a budget amendment for an enrollment increase to the superintendent of public instruction for approval in the manner provided in 20-9-163.

History: En. 75-6724 by Sec. 230, Ch. 5, L. 1971; R.C.M. 1947, 75-6724; amd. Sec. 12, Ch. 767, L. 1991; amd. Sec. 15, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (1)(a), after "increase", deleted "that could not have been anticipated at the time of the adoption of the regular budget"; in (1)(b), at beginning, deleted "If a budget amendment for the reasons provided in 20-9-161(1) through (4) does not cause the district general fund budget to exceed the limitations in 20-9-315", inserted "pursuant to 20-9-161(2) through (6)", and after "resolution" deleted "as provided in 20-9-163"; inserted (1)(c) relating to budget amendment proclamation; in (2) substituted "proclamation" for "resolution"; in (3), after "submit", substituted "a budget amendment for an enrollment increase" for "the following"; deleted (3)(a) and (3)(b) that read: "(a) a budget amendment for the reasons provided in 20-9-161(5) and (6); and

(b) a budget amendment for any reason provided in 20-9-161(1) through (4) that causes the district general fund budget to exceed the limitations in 20-9-315"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Emergency transportation fund budget, 20-10-143.

20-9-163. Resolution for budget amendment — petition to superintendent of public instruction. (1) Whenever the trustees of a district decide that a budget amendment is necessary because of an enrollment increase, they may petition the superintendent of public instruction to adopt a resolution for the budget amendment. The petition must be signed by a majority of the trustees.

(2) The petition must state the facts constituting the need for the budget amendment, the estimated amount of money required to fund the budget amendment, the funds affected by the budget amendment, the anticipated source of financing for the budget amendment, and the current year enrollment.

(3) The superintendent of public instruction shall promptly approve or disapprove the petition requesting approval to adopt a resolution for a budget amendment because of increased enrollment. If the petition is for a budget amendment for an enrollment increase as provided in 20-9-161(1), the superintendent of public instruction shall adjust the district's maximum general fund budget based on the approved enrollment increase. Upon approval, a district may not adopt a budget amendment if the amount will cause the district to exceed the district's adjusted maximum general fund budget. If the petition is approved, the trustees may adopt a resolution for a budget amendment and take all other steps required for the adoption of a budget amendment. Approval of a petition by the superintendent of public instruction authorizes the board of trustees to initiate a budget amendment by resolution and does not relieve the trustees of the necessity of complying with the requirements of the school budgeting laws. Approval of the petition may not be construed as approval of any subsequent application for increased state aid on account of the budget amendment.

History: En. 75-6725 by Sec. 231, Ch. 5, L. 1971; R.C.M. 1947, 75-6725; amd. Sec. 20, Ch. 392, L. 1979; amd. Sec. 13, Ch. 767, L. 1991; amd. Sec. 16, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (1), at beginning of first sentence, deleted "Notwithstanding the provisions of subsection (3)", after "necessary" inserted "because of an enrollment increase", after "may" inserted "petition the superintendent of public instruction to", and after "resolution" substituted "for" for "proclaiming", and at beginning of second sentence inserted "The petition must be signed" and after "majority" deleted "vote"; in (2), near beginning, substituted "petition must" for "budget amendment resolution must also" and near middle, after "budget amendment", substituted "the anticipated source of financing for the budget amendment, and the current year enrollment" for "and the time and place the board will meet for the purpose of considering and adopting a budget amendment for funds for the current school fiscal year"; deleted former (2) that read: "(2) If the trustees of a school district determine that the proposed budget amendment will cause the district general fund to exceed the limitations of 20-9-315 or is for the reasons provided in 20-9-161(5) and (6), the trustees shall petition the superintendent of public instruction for permission to adopt a resolution for a budget amendment. The petition must set forth in writing the reasons for the request, the district funds affected by the budget amendment, the estimated amount of money required for the budget amendment for each affected fund, the anticipated sources of financing for the budget amendment expenditures, and any other information required by the superintendent of public instruction. The petition must be signed by a majority of the trustees"; in (3), in first sentence after "amendment", inserted "because of increased enrollment" and inserted second and third sentences relating to adjustment of budget by Superintendent for enrollment increase; and made minor changes in style. Amendment effective July 1, 1993.

20-9-164. Notice of budget amendment resolution. A copy of the budget amendment resolution must be published one time in a newspaper that will give notice to the largest number of people of the district as determined by the trustees, and a copy of the resolution must be posted at each schoolhouse of the district. A copy of the budget amendment resolution must also be delivered to the county superintendent and to the county clerk as the clerk of the board of county commissioners of the county. The publication, posting, and delivery of the resolution must be done not less than 1 week before the day specified in the resolution for the consideration and adoption of a budget amendment.

History: En. 75-6726 by Sec. 232, Ch. 5, L. 1971; R.C.M. 1947, 75-6726; amd. Sec. 14, Ch. 767, L. 1991.

20-9-165. Budget amendment limitation, preparation, and adoption procedures. (1) The meeting of the trustees to consider and adopt a budget amendment must be open to the public, and any taxpayer in the district has the right to appear and be heard. If at the meeting a majority of the trustees present find that there is sufficient need for a budget amendment, the trustees may make and adopt a preliminary budget amendment, setting forth fully the facts constituting the need for the budget amendment. In adopting the preliminary budget amendment, the trustees may budget for any fund that was included on the final budget of the district for the current school fiscal year. The budget must be itemized to show the amount appropriated for each item.

(2) When the budget amendment is the result of increased enrollment, the maximum amount of the budget amendment for all funds must be determined in the following manner:

(a) Determine the total amount in the final budget for the current school fiscal year of all funds affected by the enrollment increase, less any amounts appropriated as capital outlay and any amount appropriated for addition to the operating reserve.

(b) Divide the amount determined in subsection (2)(a) by the number of pupils originally enrolled in the district during the immediately preceding school fiscal year. The resulting cost per pupil is the maximum permissible per-pupil expenditure in the budget amendment.

(c) Determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enrolled for the current school year. The result is the enrollment increase for the current school fiscal year.

(d) Multiply the cost per pupil determined in subsection (2)(b) by the enrollment increase determined in subsection (2)(c). The result is the maximum limitation on a budget amendment for amendments resulting from increased enrollment.

(3) For other types of budget amendments, the budget amendment is limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the budget amendment and the prelimi-

nary budget amendment must include the details of the proposed expenditures.

(4) Whenever the trustees adopt a preliminary budget amendment for the transportation fund, the trustees shall attach to the budget amendment a copy of each transportation contract that is connected with the budget amendment and that has been prepared and executed in accordance with the school transportation contract laws.

(5) After the trustees have adopted the budget amendment by a majority vote of the trustees, it must be signed by the chairman of the trustees and the clerk of the district and copies must be sent to the county superintendent, the county treasurer, and the superintendent of public instruction.

History: En. 75-6727 by Sec. 233, Ch. 5, L. 1971; amd. Sec. 13, Ch. 277, L. 1977; R.C.M. 1947, 75-6727; amd. Sec. 21, Ch. 392, L. 1979; amd. Sec. 69, Ch. 370, L. 1987; amd. Sec. 15, Ch. 767, L. 1991; amd. Sec. 42, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (1), in second sentence before "setting", deleted "on the regular budget form" and in last sentence, at end after "item", deleted "as required on the budget form". Amendment effective July 1, 1993.

Cross-References

Open meetings, Title 2, ch. 3, part 2.
School fiscal year, 20-1-301.
Meetings and quorum, 20-3-322.

20-9-166. State financial aid for budget amendments. Whenever a final budget amendment has been adopted for the general fund or the transportation fund to finance the cost of an amendment resulting from increased enrollment, the trustees may apply to the superintendent of public instruction for an increased payment from the state public school equalization aid account for the BASE funding program or for state transportation reimbursement, or both. The superintendent of public instruction shall adopt rules for the application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with 20-9-314 and this section. When the superintendent of public instruction approves an application, the superintendent of public instruction shall determine the additional amount of state aid from the state public school equalization aid account or the state transportation reimbursement that will be made available to the applicant district because of the increase in enrollment. The superintendent of public instruction shall notify the applicant district of the superintendent's approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction shall disburse the state aid to the eligible district at the time the next regular state aid payment is made.

History: En. 75-6729 by Sec. 235, Ch. 5, L. 1971; R.C.M. 1947, 75-6729; amd. Sec. 16, Ch. 767, L. 1991; amd. Sec. 43, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in first sentence, after "enrollment", deleted "or any other reason approved by the superintendent of public instruction under the provisions of 20-9-163"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State transportation reimbursement, 20-10-145.

20-9-167. Repealed. Sec. 56, Ch. 767, L. 1991.

History: En. 75-6730 by Sec. 236, Ch. 5, L. 1971; R.C.M. 1947, 75-6730.

20-9-168. Emergency budget amendment tax levy. When a budget amendment has been adopted by the board of trustees under 20-9-161(2) and a district does not have sufficient funds, including insurance proceeds and reserves, to finance the budget amendment, the district may levy a tax in the ensuing school year to fund the expenditures authorized by the budget amendment. The amount levied may not exceed the unfunded amount of the budget amendment.

History: En. Sec. 11, Ch. 6, Sp. L. July 1992; amd. Sec. 44, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in first sentence, after "been", substituted "adopted by the board of trustees" for "approved by the superintendent of public instruction" and after "proceeds" inserted "and reserves". Amendment effective July 1, 1993.

Part 2

Administration of Finances

Part Cross-References

Management of school money, Title 7, ch. 6, part 28.

Duty of Superintendent of Public Instruction to supervise school financial administration, 20-3-106.

Duty of trustees to conduct financial business of district, 20-3-324.

20-9-201. Definitions and application. (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund, debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated by the legislature are budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, impact aid fund, enterprise fund, agency fund, extracurricular fund, metal mines tax reserve fund, endowment fund, and any other funds designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public instruction has general supervisory authority as prescribed by law over the school financial administration provisions, as they relate to elementary and high school districts. The superintendent of public instruction shall adopt rules necessary to secure compliance with the law.

(3) Except as otherwise provided by law, whenever the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account

balances to the general fund if the fund does not have a cash or fund balance deficit.

History: (1)En. Sec. 237, Ch. 5, L. 1971; amd. Sec. 1, Ch. 424, L. 1977; Sec. 75-6801, R.C.M. 1947; (2)En. Sec. 238, Ch. 5, L. 1971; amd. Sec. 16, Ch. 266, L. 1977; Sec. 75-6802, R.C.M. 1947; R.C.M. 1947, 75-6801, 75-6802; amd. Sec. 22, Ch. 392, L. 1979; amd. Sec. 3, Ch. 135, L. 1987; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 2, Ch. 1, Sp. L. June 1989; amd. Sec. 22, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 568, L. 1991; amd. Sec. 17, Ch. 767, L. 1991; amd. Sec. 17, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in definition of nonbudgeted fund inserted "impact aid fund". Amendment effective July 1, 1993.

Cross-References

Appropriation for sectarian purpose prohibited, Art. V, sec. 11, Mont. Const.

Public school fund, Art. X, sec. 5, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Adult education fund, 20-7-705.

Transportation fund budget required, 20-10-143.

School food services fund a nonbudgeted fund, 20-10-207.

Vocational-technical center fund, 20-16-204.

20-9-202. County officials for financial administration when joint district. (1) When all of the schools of the joint district are located in one county, the school financial administration duties assigned to county officials shall be performed by those officials of the county wherein the schools of the district are located. When the schools of a joint district are located in more than one county, the superintendent of public instruction shall designate the county officials to perform such duties for the joint district.

(2) The designated county treasurer shall be the custodian of all joint district moneys and shall perform all other duties of the county treasurer for the joint district. The superintendent of public instruction shall disburse all moneys for a joint district to such county treasurer.

History: En. 75-6803 by Sec. 239, Ch. 5, L. 1971; amd. Sec. 14, Ch. 277, L. 1977; R.C.M. 1947, 75-6803.

Cross-References

Duties of County Treasurer, 7-6-2111.

20-9-203. Examination of district accounting records. The accounting records of all first-, second-, and third-class school districts must be audited in accordance with 2-7-503. The trustees of the district shall file a copy of the completed audit report with the department of commerce, the superintendent of public instruction, and the county superintendent.

History: En. 75-6807 by Sec. 243, Ch. 5, L. 1971; amd. Sec. 17, Ch. 266, L. 1977; R.C.M. 1947, 75-6807; amd. Sec. 2, Ch. 336, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 5, Ch. 573, L. 1981; amd. Sec. 1, Ch. 115, L. 1985; amd. Sec. 24, Ch. 489, L. 1991.

Cross-References

Duties of County Auditor, 7-6-2407 through 7-6-2412.

20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for any trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by him in his official capacity or by the board of trustees of which he is a member; or

(b) be employed in any capacity by the school district of which he is trustee.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services other than salaried services or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Except for district needs that must be met due to an unforeseen emergency as defined in 20-3-322(5), whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of $7,500, the work done or the purchase made must be by contract. Each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void.

(4) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids.

(5) Nothing in this section requires the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.

History: En. 75-6808 by Sec. 244, Ch. 5, L. 1971; amd. Sec. 1, Ch. 42, L. 1971; amd. Sec. 1, Ch. 149, L. 1973; amd. Sec. 18, Ch. 266, L. 1977; R.C.M. 1947, 75-6808; amd. Sec. 1, Ch. 314, L. 1979; amd. Sec. 23, Ch. 392, L. 1979; amd. Sec. 1, Ch. 452, L. 1983; amd. Sec. 1, Ch. 154, L. 1991.

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Preference to Montana contractors, 18-1-102.

Preference to Montana materials, 18-1-112.

Security to accompany bids, 18-1-203.

Preference to Montana labor, 18-2-403.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

School officers not to act as agents, 20-1-201.

Conflict of interest, 20-1-205.

Penalty for violation of school laws, 20-1-207.

Letting contracts for school facilities, 20-6-606.

School bus purchase — contract — bids, 20-10-110.

Transportation contract — bid letting, 20-10-125.

20-9-205. Prohibition on division of contracts to circumvent bid requirements. (1) Whenever any law of this state provides a limitation upon the amount of money that a school district can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a school district shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders, or by any similar device.

(2) This section shall apply not only where the public work or construction project is divided into several projects which are constructed at approximately the same period of time but also where the public work or construction project is divided into several projects which are constructed in different time periods or over an extended period of time.

History: En. Sec. 2, Ch. 149, L. 1973; R.C.M. 1947, 75-6808.1.

20-9-206. Entering appropriations on accounting records of county treasurer. (1) When the county treasurer receives the final budgets of the districts from the county superintendent, he shall open a fund for each budgeted fund included on the final budget of each district by entering the amount appropriated for the fund on his accounting record.

(2) Whenever the county treasurer receives a final budget amendment for a district from the county superintendent, he shall increase the amount of the regularly adopted final budget by the amount of the final budget amendment.

History: En. 75-6809 by Sec. 245, Ch. 5, L. 1971; amd. Sec. 1, Ch. 241, L. 1973; R.C.M. 1947, 75-6809; amd. Sec. 18, Ch. 767, L. 1991.

Cross-References

Duties of County Treasurer, 7-6-2111.

20-9-207. Documentation of expenditures. (1) The expenditure of district moneys, other than employee contract payments, may be authorized by the trustees when:

(a) payee-signed claims, wherein the payee attests to the accuracy of the claim and that he has not received the claimed amount, have been issued to the district; or

(b) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

(2) The intention of this section is to provide sufficient documentation for each expenditure of district moneys.

History: En. Sec. 1, Ch. 366, L. 1973; R.C.M. 1947, 75-6809.1.

Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

20-9-208. Transfer among appropriation items of a fund. (1) Whenever it appears to the trustees of a district that the appropriated amount of an item of a budgeted fund of the final budget or a budget amendment is in excess of the amount actually required during the school fiscal year for the appropriation item, the trustees may transfer any or all of the excess appropriation amount to any other appropriation item of the same budgeted fund.

(2) Transfers may not be made between different funds of the same district, between the final budget and a budget amendment, or between

similar funds of different districts except as specifically provided by this title. The trustees shall enter the authorized transfers upon the permanent records of the district.

History: En. 75-6812 by Sec. 248, Ch. 5, L. 1971; amd. Sec. 4, Ch. 241, L. 1973; R.C.M. 1947, 75-6812; amd. Sec. 19, Ch. 767, L. 1991; amd. Sec. 45, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (2), in first sentence after "district", inserted "between the final budget and a budget amendment". Amendment effective July 1, 1993.

Cross-References

School fiscal year, 20-1-301.

20-9-209. Lapse of budgeted appropriations and provision for unpaid claims. (1) All appropriations for a budgeted fund in the regular budget or for a budget amendment for a given school fiscal year lapse on the last day of the school fiscal year except the appropriations for:

(a) uncompleted improvements in progress of construction; and

(b) an obligation for the purchase of personal property ordered but not paid for during the current fiscal year and recorded with the county treasurer in the manner and on forms prescribed by the superintendent of public instruction.

(2) A lawful claim presented to the district for payment under a lapsed appropriation is an obligation of the budget for the next ensuing school fiscal year.

History: En. 75-6813 by Sec. 249, Ch. 5, L. 1971; R.C.M. 1947, 75-6813; amd. Sec. 1, Ch. 478, L. 1983; amd. Sec. 20, Ch. 767, L. 1991.

Cross-References

School fiscal year, 20-1-301.

20-9-210. Expenditure limitation of nonbudgeted fund. The expenditure limitation, at any time during the school fiscal year, for a nonbudgeted fund is the amount of cash balance of the nonbudgeted fund.

History: En. 75-6814 by Sec. 250, Ch. 5, L. 1971; R.C.M. 1947, 75-6814; amd. Sec. 21, Ch. 767, L. 1991.

20-9-211. Annual financial report of county superintendent. No later than the second Monday in September of each school fiscal year, the county superintendent shall report to the superintendent of public instruction the financial activity during the preceding school fiscal year of each district of the county in accordance with the reporting requirements prescribed by the superintendent of public instruction. The reports must be prepared on forms provided by the superintendent of public instruction.

History: En. 75-6804 by Sec. 240, Ch. 5, L. 1971; R.C.M. 1947, 75-6804; amd. Sec. 16, Ch. 133, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 133 near beginning substituted reference to second Monday in September for reference to September 1; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

School fiscal year, 20-1-301.

20-9-212. Duties of county treasurer. The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A

separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary BASE aid;

(b) the basic special tax for high schools in support of the high school BASE aid;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners.

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

(5) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) invest the money of any district as directed by the trustees of the district within 3 working days of the direction;

(10) each month give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance;

(11) remit promptly to the state treasurer receipts for the county tax for a vocational-technical center when levied by the board of county commissioners under the provisions of 20-16-202;

(12) invest the money received from the basic county tax, the basic special tax, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation

schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) remit on a monthly basis to the state treasurer, in accordance with the provisions of 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned and excluding any amount required for high school out-of-county tuition under the provisions of 20-9-334, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b).

History: En. 75-6805 by Sec. 241, Ch. 5, L. 1971; amd. Sec. 5, Ch. 241, L. 1973; amd. Sec. 3, Ch. 304, L. 1975; amd. Sec. 1, Ch. 180, L. 1977; amd. Sec. 1, Ch. 291, L. 1977; R.C.M. 1947, 75-6805; amd. Sec. 24, Ch. 392, L. 1979; amd. Sec. 5, Ch. 682, L. 1979; amd. Sec. 1, Ch. 234, L. 1983; amd. Sec. 1, Ch. 438, L. 1985; amd. Sec. 12, Ch. 481, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 23, Ch. 11, Sp. L. June 1989; amd. Sec. 5, Ch. 711, L. 1991; amd. Sec. 3, Ch. 6, Sp. L. July 1992; amd. Sec. 17, Ch. 133, L. 1993; amd. Sec. 46, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 133 in (3), after "each", deleted "budgeted" and after "fund" deleted "included in the final budget of each district and for each nonbudgeted fund"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 633 in (1), at end of first sentence after "superintendent", inserted "or by the superintendent of public instruction"; in (1)(a) and (1)(b), at end, substituted "BASE aid" for "foundation programs"; in (2), at end, inserted "or the superintendent of public instruction"; deleted former (3) that read: "keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district"; in (3), at end after "fund", deleted "included in the final budget of each district and for each nonbudgeted fund established by each district"; in (12), near beginning after "county tax", deleted "in support of the elementary foundation programs and", after "special tax" substituted "the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules" for "in support of the high school foundation programs", and at end substituted "through (1)(d)" for "and (1)(b)"; in (13), after "20-9-333", deleted "for elementary and high school district foundation program support"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Duties of County Treasurer, 7-6-2111.

Management of school funds, 7-6-2801.

Teachers' retirement, Title 19, ch. 20.

School fiscal year, 20-1-301.

School buses and transportation, Title 20, ch. 10, part 1.

Vocational-technical center funding, 20-16-204.

20-9-213. Duties of trustees. The trustees of each district have the sole power and authority to transact all fiscal business and execute all contracts in the name of the district. A person other than the trustees acting as a governing board may not expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants to be issued for the payment of lawful obligations;

(3) issue warrants on any budgeted fund in anticipation of budgeted revenue, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in direct obligations of the United States government; in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state; or in a repurchase agreement, as authorized in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6.

(5) cause the district to record each transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 15, the financial activities of each fund maintained by the district during the last completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted not later than September 1 to the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district.

History: **En. 75-6806 by Sec. 242, Ch. 5, L. 1971; amd. Sec. 7, Ch. 137, L. 1973; amd. Sec. 2, Ch. 366, L. 1973; amd. Sec. 4, Ch. 304, L. 1975; R.C.M. 1947, 75-6806; amd. Sec. 1, Ch. 45, L. 1981; amd. Sec. 16, Ch. 421, L. 1985; amd. Sec. 1, Ch. 428, L. 1987; amd. Sec. 6, Ch. 35, L. 1989; amd. Sec. 3, Ch. 1, Sp. L. June 1989; amd. Sec. 24, Ch. 11, Sp. L. June 1989; amd. Sec. 25, Ch. 489, L. 1991; amd. Sec. 39, Ch. 10, L. 1993; amd. Sec. 18, Ch. 133, L. 1993.**

Compiler's Comments

1993 Amendments: Chapter 10 in (4), near end of first sentence after "FDIC", deleted "FSLIC"; and made minor changes in style.

Chapter 133 in (6), in first sentence, substituted reference to August 15 for reference to August 1 and in second sentence, after "submitted", inserted "not later than September 1"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Investment of proceeds arising from sale of county high school construction bonds, 7-6-2802.

Investment of certain construction bond proceeds, 7-7-2112.

Authority to request, accept, and disburse money, 20-3-208.

Duties of trustees, 20-3-324.

Trustees' authority to acquire property by lease-purchase agreement, 20-6-609.

20-9-214. Fees. (1) The trustees of a district may:

(a) require pupils in the commercial, industrial arts, music, domestic science, scientific, or agricultural courses to pay reasonable fees to cover the actual cost of breakage and of excessive supplies used; and

(b) charge pupils a reasonable fee for a course or activity not reasonably related to a recognized academic and educational goal of the district or a course or activity held outside normal school functions. The trustees may waive the fee in cases of financial hardship.

(2) The fees collected pursuant to subsection (1)(a) must be deposited in the general fund, and the fees collected pursuant to subsection (1)(b) must be deposited in a nonbudgeted fund as provided in 20-9-210.

History: En. 75-6322 by Sec. 135, Ch. 5, L. 1971; R.C.M. 1947, 75-6322; amd. Sec. 1, Ch. 486, L. 1985; amd. Sec. 22, Ch. 767, L. 1991.

20-9-215. Destruction of certain financial records. Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any county or school district officer after a period of 5 years.

History: En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; R.C.M. 1947, 59-516; amd. Sec. 5, Ch. 384, L. 1979; amd. Sec. 3, Ch. 543, L. 1983.

Cross-References

Destruction of old records by officer, 20-1-212.

20-9-216 through 20-9-219 reserved.

20-9-220. Clearing accounts. (1) A clearing account may be used by a school district for bookkeeping purposes if:

(a) all funds from the account are disbursed through issuance of warrants as provided in 20-9-221;

(b) records are kept showing the source and use of the funds that passed through the account; and

(c) the balance in the account is no greater than the amount necessary to cover outstanding warrants written against the account.

(2) An elementary school district and a high school district that are unified may use the same clearing account if the account is maintained in accordance with rules adopted by the superintendent of public instruction.

(3) Nothing in this section may be construed to allow the use of funds for any purpose or in any manner other than that expressly authorized in this title.

History: En. Sec. 1, Ch. 263, L. 1987.

20-9-221. Procedure for issuance of warrants. (1) The trustees of each district shall issue all warrants, and the warrants must identify:

(a) the budgeted fund or nonbudgeted fund on which the warrant is drawn; and

(b) the warrant as a budget amendment warrant if it is drawn on a budget amendment.

(2) All warrants issued by a district must be countersigned by the chairman of the trustees and the clerk of the district before the warrants are negotiable. Facsimile signatures may be used in accordance with the provisions of 2-16-114. A facsimile signature device used under authority of

this section may not be available to the other countersigner of the warrant, or the device must have a nonresettable metering control that can provide a positive reconciliation between the number of warrants issued and the number of signatures applied. Either split signature plates or a double signature plate may be used according to the requirements of the district. The signature plates and the device keys must be kept secure by the district clerk under the supervision of the board of trustees of the district.

(3) The trustees shall issue warrants in single copy or in triplicate copy. When the warrants are issued in single copy, the trustees shall immediately provide a listing of the issued warrants on a fund-by-fund basis to the county treasurer and retain a copy of the listing in the district accounting records. When the warrants are issued in triplicate, the original copy of the warrant must be delivered to the payee, the duplicate must be sent immediately to the county treasurer, and the triplicate must be retained by the district for accounting record purposes. The duplicate and triplicate copies must be identified on the face of the warrant as "Not Negotiable—Copy of Original".

(4) However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period.

History: En. 75-6810 by Sec. 246, Ch. 5, L. 1971; amd. Sec. 1, Ch. 341, L. 1971; amd. Sec. 2, Ch. 241, L. 1973; R.C.M. 1947, 75-6810; amd. Sec. 1, Ch. 279, L. 1979; amd. Sec. 1, Ch. 43, L. 1989; amd. Sec. 23, Ch. 767, L. 1991.

Cross-References

County warrants, Title 7, ch. 6, part 26.

20-9-222. Recording and payment of warrants by county treasurer. (1) Immediately after receiving a duplicate warrant or a warrant listing from a district, the county treasurer shall enter the amount and number of such warrant on his accounting records under the fund identified on such warrant or listing. The recording of the warrants shall allow for the computation of the unexpended amount of a budgeted fund from the accounting records.

(2) Whenever it appears to the county treasurer that a budgeted fund is so nearly exhausted that the issuance of another warrant will cause the overexpenditure of such budget, the county treasurer shall immediately notify the appropriate district of the expended condition of the budget and the district shall not issue another warrant against such fund that would overexpend the budget.

(3) After receiving a duplicate warrant or warrant listing that contains a warrant which will exceed the unexpended balance of a budgeted fund, the county treasurer shall immediately notify the district of such overdraft. If the district has not corrected the overdraft before the presentation of the warrant for payment, the county treasurer shall refuse to pay or register such warrant and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Budget" and return the warrant to the person presenting it for payment.

(4) Whenever a warrant will overexpend the cash balance of a nonbudgeted fund, the county treasurer shall refuse to pay or register such warrant and shall endorse across the face of such warrant "Payment and

Registration Refused, Insufficient Funds" and return the warrant to the person presenting it for payment. The county treasurer shall immediately notify the district of such refusal to pay or register the warrant drawn on a nonbudgeted fund.

History: En. 75-6811 by Sec. 247, Ch. 5, L. 1971; amd. Sec. 3, Ch. 241, L. 1973; R.C.M. 1947, 75-6811.

Cross-References

Duties of County Treasurer, 7-6-2111.

County warrants, Title 7, ch. 6, part 26.

Management of school funds, 7-6-2801.

20-9-223. Cancellation of outstanding warrants — duplication. The trustees of any school district shall be authorized to cancel any warrant that has been issued for at least 1 year. However, the contractual obligation of the district that has been satisfied by the issuance of the warrant shall not be terminated until the time specified by 27-2-202(1) has elapsed. When a warrant has been cancelled and the obligation has not terminated under 27-2-202(1), the district may issue a duplicate warrant without the completion of an indemnity bond by the payee.

History: En. Sec. 1, Ch. 365, L. 1973; R.C.M. 1947, 75-6811.1.

20-9-224. Credit of refund — refund of revenue not charged against spending authority. (1) Whenever a school district deposits with the county treasurer a refund or rebate, the county treasurer shall credit the budgeted fund to which it is deposited and restore the school district's spending authority in that fund in the amount of the refund or rebate.

(2) A refund of revenue previously received by a school district shall not be charged against a school district's spending authority.

History: En. 75-6811.2 by Sec. 1, Ch. 329, L. 1977; R.C.M. 1947, 75-6811.2; amd. Sec. 1, Ch. 83, L. 1979.

Cross-References

Duties of County Treasurer, 7-6-2111.

20-9-225. Definitions relating to interest assessment. As used in 20-9-226 and 20-9-227, the following definitions apply:

(1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by a school district.

(2) "Supplies" means all personal property purchased, leased, or contracted for by a school district, including leases of equipment. The term also includes leases of buildings or other real property by a school district.

History: En. Sec. 4, Ch. 413, L. 1985.

20-9-226. Interest assessed on amounts due. (1) Except as provided in 20-9-227, a school district shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the district fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 45 days after receipt of a properly completed invoice, addressed to the payer school district, or receipt of the supplies or services by the school district, whichever is later.

History: En. Sec. 5, Ch. 413, L. 1985.

20-9-227. Exemptions from interest assessment. Section 20-9-226 does not apply to the following:

(1) third-class school districts where the board of trustees does not meet monthly;

(2) interdistrict or intergovernmental transactions;

(3) claims subject to a good faith dispute;

(4) delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the district;

(5) contracts entered into before October 1, 1985; or

(6) wages due and payable to school district employees or payments from any retirement system created pursuant to Title 19.

History: En. Sec. 6, Ch. 413, L. 1985.

20-9-228 through 20-9-230 reserved.

20-9-231. Metal mines tax reserve fund. (1) The governing body of a local school district receiving tax collections under 15-37-117(1)(d) may establish a metal mines tax reserve fund to be used to hold the collections. The governing body may hold money in the fund for any time period considered appropriate by the governing body. Money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose provided by law.

(3) Money in the fund must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve fund must be credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund under the provisions of this title.

History: En. Sec. 18, Ch. 672, L. 1989; amd. Sec. 24, Ch. 767, L. 1991.

Part 3
Equalization Aid

Part Compiler's Comments

Audit During Biennium: Section 53, Ch. 633, L. 1993, provided: "(1) The legislative audit committee, in accordance with its constitutional authority to supervise legislative postaudits, shall ensure the independence of the audit of the office of the superintendent of public instruction conducted pursuant to Title 5, chapter 13, during the 1994-95 biennium. It is the intent of the legislature that the biennial financial compliance audit for the 2 fiscal years ending June 30, 1994, be contracted. To the extent that the legislative audit committee contracts with a private firm to conduct a portion of the audit or the entire audit, including audit work required to complete the statewide audit and the federal single audit, the total cost of all audit work during the biennium must be paid first from the line item appropriation to the office of the superintendent of public instruction for audit costs.

(2) There is appropriated from the general fund to the legislative auditor $40,000 for the biennium ending June 30, 1995, to be used if the line item appropriation to the office of the superintendent of public instruction is insufficient to pay the total audit costs."

Part Cross-References

ANB defined, 20-1-101.
School fiscal year, 20-1-301.
Definition of various schools, 20-6-501.

20-9-301. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6901 by Sec. 251, Ch. 5, L. 1971; R.C.M. 1947, 75-6901; amd. Sec. 25, Ch. 11, Sp. L. June 1989; amd. Sec. 25, Ch. 767, L. 1991.

20-9-302. School isolation. (1) The trustees of any district operating an elementary school of less than 10 ANB or a high school of less than 25 ANB for 2 consecutive years shall apply to have the school classified as an isolated school. The application shall be submitted by the trustees to the county superintendent by May 1 of the second consecutive year that enrollment falls below the amount specified in this subsection. Such application shall include:

(a) the name of each pupil who will attend the school during the ensuing school fiscal year with the distance the pupil resides from the nearest county road or highway;

(b) a description of conditions affecting transportation such as poor roads, mountains, rivers, or other obstacles to travel, the distance the school is from the nearest open school having room and facilities for the pupils of such school, or any other condition that would result in an unusual hardship to the pupils of the school if they were transported to another school; and

(c) any other information prescribed by the superintendent of public instruction.

(2) The county superintendent shall submit the applications to the board of county commissioners (budget board) for their consideration on or before May 15. The budget board shall approve or disapprove the application on the basis of the criteria established by the superintendent of public instruction. The budget board also may approve an application because of the existence of other conditions which would result in an unusual hardship to the pupils of such school if they were transported to another school.

(3) When an application is approved, the county superintendent shall submit such application to the superintendent of public instruction before June 1. The superintendent of public instruction shall approve or disapprove such application for isolated classification by the fourth Monday of June on the basis of the information supplied by the application or objective information the superintendent of public instruction may collect on his own initiative. No elementary or high school shall be considered an isolated school until the approval of the superintendent of public instruction has been received.

History: En. 75-6608 by Sec. 206, Ch. 5, L. 1971; amd. Sec. 1, Ch. 212, L. 1973; R.C.M. 1947, 75-6608; amd. Sec. 1, Ch. 347, L. 1981.

Cross-References

Abandonment of elementary district, 20-6-209.

Abandonment of high school district, 20-6-307.

20-9-303. Nonisolated school BASE budget funding — special education funds. (1) An elementary school that has an ANB of nine or fewer pupils for 2 consecutive years and that is not approved as an isolated school under the provisions of 20-9-302 may budget and spend the BASE budget amount, but the county and state shall provide one-half of the direct state aid, and the district shall finance the remaining one-half of the direct state aid by a tax levied on the property of the district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the direct state aid.

(2) Funds provided to support the special education program may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education must be accounted for separately from and in addition to the balance of the school district general fund budgeting requirements provided in 20-9-307 and 20-9-308. The amount of the special education allowable cost payments that is not matched with district funds, as required in 20-9-321, will reduce by a like amount the district's ensuing year's allowable cost payment for special education.

History: En. 75-6906 by Sec. 256, Ch. 5, L. 1971; amd. Sec. 8, Ch. 137, L. 1973; amd. Sec. 2, Ch. 345, L. 1974; R.C.M. 1947, 75-6906; amd. Sec. 1, Ch. 317, L. 1981; amd. Sec. 2, Ch. 347, L. 1981; amd. Sec. 26, Ch. 11, Sp. L. June 1989; amd. Sec. 18, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 deleted former (1) and (2) that read: "As used in this title, the term "foundation program" means the minimum expenditures that are sufficient to provide for the educational program of a school. The foundation program relates only to those expenditures authorized by a district's general fund budget and may not include expenditures from any other fund. It is financed by:

(a) county equalization money, as provided in 20-9-331 and 20-9-333;

(b) state equalization aid, as provided in 20-9-343;

(c) appropriations for special education; and

(d) a district levy as provided in subsection (3) for support of a school not approved as an isolated school under the provisions of 20-9-302.

(2) The foundation program includes:

(a) amounts in support of general education programs as provided in the schedules in 20-9-316 through 20-9-320; and

(b) payments in support of special education programs under 20-9-321"; in two places in (1) substituted "direct state aid" for "foundation program", substituted "BASE budget" for "schedule", after "shall" substituted "provide" for "participate in financing", and after "remaining one-half" inserted "of the direct state aid"; in (2), in first sentence before "may", substituted "program" for "accounting budget", in second sentence, after "from", inserted "and in addition to" and at end, after "fund", inserted "budgeting requirements provided in 20-9-307 and 20-9-308", deleted former third sentence that read: "Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration part of this title", and in last sentence, near beginning, substituted "amount" for "unexpended balance", after "education" substituted "allowable cost payments that is not matched with district funds, as required in 20-9-321, will" for "accounting budget carries over to the next year to", after "reduce" substituted "by a like amount" for "the amount of funding required to finance", and after "year's" substituted "allowable cost payment" for "foundation program amount"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Property tax levies, Title 15, ch. 10.

Accreditation and curriculum, Title 20, ch. 7, part 1.

Special education for exceptional children, Title 20, ch. 7, part 4.

Schedule of allowable costs for determining maximum-budget-without-a-vote, 20-7-431.

20-9-304. Repealed. Sec. 3, Ch. 325, L. 1993.

History: En. 75-6925 by Sec. 275, Ch. 5, L. 1971; R.C.M. 1947, 75-6925; amd. Sec. 25, Ch. 609, L. 1987; amd. Sec. 1, Ch. 262, L. 1991.

20-9-305. Proration and calculation of BASE funding program for joint district. (1) In joint districts, the direct state aid of a joint district must be prorated among the counties in which any part of the joint district is located for the purpose of determining the amount of each source of revenue for the direct state aid for which each county is obligated. The proration of the joint district direct state aid must be calculated as follows:

(a) Divide the joint district direct state aid by the ANB of the joint district to determine the per-ANB amount of the direct state aid.

(b) Determine the ANB for each county's portion of the joint district on the basis of each pupil's resident county. When taken together, the sum of the ANB assigned to all the counties must equal the total ANB for the joint district.

(c) Multiply the per-ANB amount of the direct state aid determined in subsection (1)(a) by the ANB for each county's portion, as determined in subsection (1)(b), to determine the portion of the direct state aid for each county.

(2) The portion of a joint district direct state aid for each county, as determined in subsection (1)(c), is a separate direct state aid amount in the county for the purposes of calculating the various revenues for the BASE funding program. After the calculation of the direct state aid revenues, the remainder of the general fund revenues must be calculated in accordance with the provisions for general fund financing.

History: En. 75-6927 by Sec. 277, Ch. 5, L. 1971; amd. Sec. 13, Ch. 137, L. 1973; R.C.M. 1947, 75-6927; amd. Sec. 19, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 throughout section substituted "direct state aid" or "direct state aid amount" for "foundation program"; in (1), near beginning, substituted "direct state aid of a joint district must" for "foundation program shall"; in (2), near end of first sentence, substituted "BASE funding" for "foundation"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

District consolidation of two or more counties to organize joint elementary district, 20-6-208.

Procedure for organization of joint high school district, 20-6-309.

20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 40% of the basic entitlement and 40% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) $200,000 for each high school district; and

(b) $18,000 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) $18,000 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) $200,000 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 40% of the basic entitlement and 40% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of $4,900 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of $3,500 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of $3,500 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of $4,900 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

History: En. Sec. 1, Ch. 633, L. 1993.

Compiler's Comments

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

20-9-307. BASE funding program — district general fund budget — funding sources. (1) A basic system of free quality public elementary schools and high schools must be established and maintained throughout the state of Montana to provide equality of educational opportunity to all school-age children.

(2) The state shall in an equitable manner fund and distribute to the school districts the state's share of the cost of the basic school system through BASE aid to support the BASE funding program in the manner established in this title.

(3) The budgetary vehicle for achieving the financing system established in subsection (2) is the general fund budget of the school district. The purpose of the district general fund budget is to finance those instructional, administrative, facility maintenance, and other operational costs of a district not financed by other funds established for special purposes in this title.

(4) The BASE funding program for the districts in the state is financed by a combination of the following sources:

(a) county equalization money, as provided in 20-9-331 and 20-9-333;

(b) state equalization aid, as provided in 20-9-343, including guaranteed tax base aid for eligible districts as provided in 20-9-366 through 20-9-369;

(c) appropriations for special education;

(d) a district levy, as provided in 20-9-302, for support of a school not approved as an isolated school under the provisions of that section; and

(e) district levies or other revenue, as provided by 20-9-308 and 20-9-353.

History: En. Sec. 2, Ch. 633, L. 1993.

Compiler's Comments

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

20-9-308. BASE budgets and maximum general fund budgets. (1) For the school fiscal year beginning on July 1, 1993, the trustees of a district shall adopt a general fund budget that:

(a) except as provided in subsection (2), is at least equal to the BASE budget established for the district; or

(b) except as provided in subsection (4), does not exceed the maximum general fund budget established for the district.

(2) (a) If the BASE budget for a district for the school fiscal year beginning on July 1, 1993, is greater than the general fund budget of the district for the prior school fiscal year, the trustees of the district:

(i) may increase the general fund budget for the district by 4% of the previous year's general fund budget or by 4% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes; but

(ii) may not adopt a general fund budget that reflects less than the following general fund budget growth amounts for the appropriate school fiscal year:

(A) 20% of the range between the district general fund budget for the school fiscal year ending June 30, 1993, and the BASE budget for the district for the school fiscal year beginning July 1, 1993;

(B) 25% of the range between the district general fund budget for the school fiscal year ending June 30, 1994, and the BASE budget for the district for the school fiscal year beginning July 1, 1994;

(C) 33.3% of the range between the district general fund budget for the school fiscal year ending June 30, 1995, and the BASE budget for the district for the school fiscal year beginning July 1, 1995;

(D) 50% of the range between the district general fund budget for the school fiscal year ending June 30, 1996, and the BASE budget for the district for the school fiscal year beginning July 1, 1996; or

(E) the remainder of the range between the district general fund budget for the school fiscal year ending June 30, 1997, and the BASE budget for the district for the school fiscal year beginning July 1, 1997.

(b) (i) For the school fiscal year beginning July 1, 1993, a district may not exceed the limitations in subsection (2)(a).

(ii) Except for the school fiscal year beginning July 1, 1993, whenever the trustees of a district adopt a general fund budget that exceeds one of the limitations in subsection (2)(a) but does not exceed the BASE budget for the district, the trustees shall submit a proposition on the amount that exceeds the limitation to the electors of the district, as provided in 20-9-353.

(c) Nothing in this section is intended to require a district to budget in excess of its BASE budget.

(3) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall:

(a) adopt a resolution stating the reasons and purposes for exceeding the BASE budget amount if the general fund budget adopted under this subsection (3) does not exceed the greater of:

(i) 104% of the previous year's general fund budget; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes; or

(b) except for the school fiscal year beginning July 1, 1993, submit a proposition on any amount of the over-BASE budget that exceeds one of the limitations in subsection (3)(a) to the electors of the district, as provided in 20-9-353.

(c) For the school fiscal year beginning July 1, 1993, a district may not exceed the limitations in subsection (3)(a).

(4) (a) If the maximum general fund budget for a district for an ensuing school fiscal year is less than the general fund budget for the district for the current school fiscal year, the trustees of the district may not adopt a general fund budget for the ensuing school fiscal year that is greater than the district's general fund budget for the current school fiscal year.

(b) Except for the school fiscal years beginning July 1, 1993, and July 1, 1994, the trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

(5) Whenever the trustees of a district adopt a general fund budget that does not exceed the BASE budget for the district, the trustees shall finance this amount with the following sources of revenue:

(a) state equalization aid as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(6) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district as provided in 20-9-141.

[(7) For the purpose of this section, the general fund budget or general fund per-ANB budget for the school fiscal year ending June 30, 1993, is the general fund budget funded by any state, local, and federal revenue, excluding Public Law 81-874 receipts received in the school fiscal year ending June 30, 1993. Before excluding any Public Law 81-874 funding, a district may increase the district general fund budget for the school fiscal year ending June 30, 1993, by the allowable increases in subsections (2) and (3).]

History: En. Sec. 3, Ch. 633, L. 1993.

Compiler's Comments

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

Contingent Termination: Section 64, Ch. 633, L. 1993, provided: "The bracketed language in [section 3] [20-9-308(7)], relating to excluding Public Law 81-874 receipts, is void on the date that the superintendent of public instruction certifies to the governor that, prior to January 1, 1995, a letter has been received from the United States department of education declaring that, after analysis of [this act], the bracketed language in [section 3] [20-9-308(7)] violates the provisions of the federal impact aid laws and will result in the loss of federal impact aid funds."

20-9-309 and 20-9-310 reserved.

20-9-311. *(Temporary)* **Calculation of average number belonging (ANB).** (1) Average number belonging (ANB) must be computed as follows:

(a) count the regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year; and

(b) multiply the enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-804, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. If a variance has been granted as provided in 20-1-302, ANB must be computed in a manner prescribed by the superintendent of public instruction, but the ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the count calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided for in 20-7-117, may not be included in the ANB calculations.

(8) If a student spends less than half the time in the regular program and the balance of the time in school in the special education program, the student is considered a full-time special education pupil but is not considered regularly enrolled for ANB purposes. If a student spends half or more of the time in school in the regular program and the balance of the time in the special education program, the student is considered regularly enrolled for ANB purposes.

(9) The ANB of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes, and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and no incorporated territory is involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes, and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes, and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(10) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction.

(11) For average daily attendance reporting purposes, districts shall provide the superintendent of public instruction with annual reports of school attendance for regularly enrolled students and special education students, using a format determined by the superintendent of public instruction. *(Terminates June 30, 1994—sec. 62, Ch. 633, L. 1993.)*

20-9-311. *(Effective July 1, 1994)* **Calculation of average number belonging (ANB).** (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the nearest school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divided by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-804, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. If a variance has been granted as provided in 20-1-302, ANB must be computed in a manner prescribed by the superintendent of public instruction, but the ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and no incorporated territory is involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction.

(10) For average daily attendance reporting purposes, districts shall provide the superintendent of public instruction with annual reports of school attendance for regularly enrolled students and special education students, using a format determined by the superintendent.

History: **En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975; R.C.M. 1947, 75-6902(part); amd. Sec. 8, Ch. 288, L. 1979; amd. Sec. 1, Ch. 498, L. 1987; amd. Sec. 6, Ch. 337, L. 1989; amd. Sec. 27, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 250, L. 1991; amd. Secs. 20, 33, Ch. 633, L. 1993.**

Compiler's Comments

1993 Amendment: (Temporary version) Chapter 633 substituted (1)(a) and (1)(b) describing computation for former language providing that ANB is computed "by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180; inserted (2) allowing up to 7 pupil-instruction-related days to be included in ANB calculation; in (3), after "total", inserted "ANB", and deleted second sentence that read: "For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days"; in two places in (4) and once in (5) substituted "enrollment" for "attendance"; in first sentence of (5), before "a regular", deleted "or absence from" and after "one-half" substituted "pupil for ANB purposes" for "day attended or absent as the case may be" and in last sentence, after "but", deleted "in no case may" and after "ANB" inserted "for a kindergarten student may not"; in (6), after "days", substituted "the pupil may not be included in the count calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count" for "including pupil-instruction-related days, his absence after the 10th day of absence may not be included in the aggregate days of absence and his enrollment in the school may not be considered in the calculation of the average number belonging until he resumes attendance at school"; inserted (7) prohibiting enrollment of prekindergarten pupils from being included in ANB calculations; substituted (9)(a)(i) through (9)(a)(iii) relating to school location for aggregation of enrollment for former language that read: "(i) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town located in the district and 3 miles from any other school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes; or

(ii) a school of the district is located more than 3 miles from any other school of the district and no incorporated territory is involved in the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes"; in (9)(d), near end, substituted "BASE funding" for "foundation"; inserted (11) requiring districts to provide Superintendent with annual attendance reports; and made minor changes in style. Amendment effective July 1, 1993.

(Version effective July 1, 1994) Chapter 633 substituted (1)(a) and (1)(b) describing computation for former language providing that ANB is computed "by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180"; deleted former (2) that read: "(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he is considered a full-time special pupil but is not considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he is considered regularly enrolled for ANB purposes"; inserted (2) allowing up to 7 pupil-instruction-related days to be included in ANB calculation; in (3), after "total", inserted "ANB" and deleted second sentence that read: "For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days"; in two places in (4) and once in (5) substituted "enrollment" for "attendance"; in first sentence of (5), before "a regular", deleted "or absence from" and after "one-half" substituted "pupil for ANB purposes" for "day attended or absent as the case may be" and in last sentence, after "but", deleted "in no case may" and after "ANB" inserted "for a kindergarten student may not"; in (6), after "days", substituted "the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count" for "including pupil-instruction-related days, his absence after the 10th day of absence may not be included in the aggregate days of absence and his enrollment in the school may not be considered in the calculation of the average number belonging until he resumes attendance at school"; inserted (7) prohibiting enrollment of prekindergarten pupils from being included in ANB calculations; substituted (8)(a)(i) through (8)(a)(iii) relating to school location for aggregation of enrollment for former language that read: "(a) (i) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town located in the district and 3 miles from any other school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes; or

(ii) a school of the district is located more than 3 miles from any other school of the district and no incorporated territory is involved in the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes"; inserted (10) requiring districts to provide Superintendent with annual attendance reports; and made minor changes in style. Amendment effective July 1, 1994.

Effective Date — Retroactive Applicability: Section 59(3), Ch. 633, L. 1993, provided: "(3) [Sections 23 and 33] [20-9-321 and 20-9-311] are effective July 1, 1994, and apply retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1993."

Cross-References

School fiscal year, 20-1-301.

Released time for religious purposes to be counted as part of school day, 20-1-308.

Preschool program to be included in calculation of ANB, 20-7-117.

20-9-312. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905.1 by Sec. 1, Ch. 354, L. 1974; R.C.M. 1947, 75-6905.1; amd. Sec. 1, Ch. 340, L. 1979; amd. Sec. 28, Ch. 11, Sp. L. June 1989.

20-9-313. *(Temporary)* **Circumstances under which the regular average number belonging may be increased.** The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for the high school must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school.

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction;

(6) a full-time special pupil, as defined in 20-9-311, in a given school fiscal year may no longer be considered a full-time special pupil in the ensuing school fiscal year (the superintendent of public instruction may grant one ANB for the pupil for the ensuing school fiscal year); or

(7) a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the 12th grade. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction.

20-9-313. *(Effective July 1, 1994)* **Circumstances under which the regular average number belonging may be increased.** The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for the high school must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school.

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction; or

(6) a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the 12th grade. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction.

History: En. 75-6903 by Sec. 253, Ch. 5, L. 1971; amd. Sec. 4, Ch. 345, L. 1973; amd. Sec. 2, Ch. 343, L. 1974; amd. Sec. 1, Ch. 141, L. 1975; R.C.M. 1947, 75-6903; amd. Sec. 4, Ch. 334, L. 1979; amd. Sec. 2, Ch. 148, L. 1981; amd. Sec. 7, Ch. 337, L. 1989; amd. Sec. 6, Ch. 466, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 466 deleted former (6) that read: "(6) a full-time special pupil, as defined in 20-9-311, in a given school fiscal year may no longer be considered a full-time special pupil in the ensuing school fiscal year (the superintendent of public instruction may grant one ANB for the pupil for the ensuing school fiscal year)." Amendment effective July 1, 1994.

20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to May 10, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than May 10, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase that the estimated enrollment increase is over the current enrollment; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least 6%.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the basic entitlement and total per-ANB entitlement for the ensuing ANB calculation period is the difference between the enrollment for the ensuing school fiscal year and 106% of the current enrollment. The amount determined is the maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's basic entitlement and total per-ANB entitlement.

(6) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year. If the actual enrollment is less than the average number belonging used for BASE funding program and entitlement calculations, the superintendent of public instruction shall revise the total per-ANB entitlement calculations using the actual average number belonging. All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(3).

History: En. 75-6904 by Sec. 254, Ch. 5, L. 1971; amd. Sec. 1, Ch. 113, L. 1973; R.C.M. 1947, 75-6904; amd. Sec. 1, Ch. 484, L. 1979; amd. Sec. 1, Ch. 203, L. 1981; amd. Sec. 8, Ch. 337, L. 1989; amd. Sec. 10, Ch. 555, L. 1991; amd. Sec. 21, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in six places changed "foundation program" or "foundation program schedule amount" to "basic entitlement and total per-ANB entitlement"; in (2)(a), before "school", substituted "current" for "preceding"; and in (6), in first sentence before "entitlement", deleted "equalization or", in second sentence substituted "BASE funding" for "foundation" and after "revise the" substituted "total per-ANB" for "foundation program and", and in third sentence substituted "total per-ANB entitlement" for "payments". Amendment effective July 1, 1993.

20-9-315 through 20-9-320. Repealed. Sec. 54, Ch. 633, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

20-9-315. En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(part); amd. Sec. 1, Ch. 72, L. 1979; amd. Sec. 29, Ch. 11, Sp. L. June 1989; amd. Sec. 26, Ch. 767, L. 1991.

20-9-316. En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(1) thru (6); amd. Sec. 1, Ch. 690, L. 1979; amd. Sec. 1, Ch. 75, L. 1981; amd. Secs. 2, 5, Ch. 475, L. 1983; amd. Sec. 1, Ch. 629, L. 1983; amd. Sec. 1, Ch. 738, L. 1985; amd. Sec. 1, Ch. 4, Sp. L. June 1989.

20-9-317. En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(7) thru (9); amd. Sec. 2, Ch. 690, L. 1979; amd. Sec. 2, Ch. 75, L. 1981; amd. Sec. 2, Ch. 629, L. 1983; amd. Sec. 2, Ch. 738, L. 1985; amd. Sec. 2, Ch. 4, Sp. L. June 1989.

20-9-318. En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(10) thru (15); amd. Sec. 3, Ch. 690, L. 1979; amd. Sec. 3, Ch. 75, L. 1981; amd. Secs. 3, 5, Ch. 475, L. 1983; amd. Sec. 3, Ch. 629, L. 1983; amd. Sec. 3, Ch. 738, L. 1985; amd. Sec. 1, Ch. 7, Sp. L. June 1986; amd. Sec. 3, Ch. 666, L. 1987; amd. Sec. 30, Ch. 11, Sp. L. June 1989.

20-9-319. En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(16) thru (18); amd. Sec. 4, Ch. 690, L. 1979; amd. Sec. 4, Ch.

75, L. 1981; amd. Sec. 4, Ch. 629, L. 1983; amd. Sec. 4, Ch. 738, L. 1985; amd. Sec. 2, Ch. 7, Sp. L. June 1986; amd. Sec. 4, Ch. 666, L. 1987; amd. Sec. 31, Ch. 11, Sp. L. June 1989.

20-9-320. En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(19); amd. Sec. 32, Ch. 11, Sp. L. June 1989.

20-9-321. *(Temporary)* **Allowable cost payment and contingency funds for special education.** (1) For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget must be prepared on forms provided by the superintendent of public instruction and must set out for each program:

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of this section.

(2) The total amount of allowable costs approved by the superintendent of public instruction is the special education allowable cost payment for current year special education program purposes.

(3) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district general fund budget for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of the district as provided in 20-9-507.

(4) (a) The special education contingency funds in subsection (3):

(i) are biennially appropriated;

(ii) are for emergencies that may arise in the special education programs of school districts or special education cooperatives; and

(iii) may be used to fund positions that have gone unfilled for a full school fiscal year and for which state special education funds were not awarded.

(b) The board of trustees of a district or the management board of a special education cooperative may apply for contingency funding by submitting to the superintendent of public instruction, in the form prescribed by the superintendent of public instruction, written documentation that describes the need for the funds. *(Terminates June 30, 1994—sec. 62, Ch. 633, L. 1993.)*

20-9-321. *(Effective July 1, 1994)* **Allowable cost payment for special education.** (1) For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors:

(a) the district ANB student count as established pursuant to 20-9-311 and 20-9-313;

(b) a per-ANB amount for the special education instructional block grant;

(c) a per-ANB amount for the special education related services block grant;

(d) weighted cost factors for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration;

(e) district and cooperative expenditure reports; and

(f) any other data required by the superintendent of public instruction to administer the provisions of this section.

(2) Special education allowable cost payments must be granted to each school district and cooperative with a special education program as follows:

(a) An instructional block grant must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(b) A special education related services block grant must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education related services amount. The special education related services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board. If a cooperative or joint board meets the requirements of 20-7-457, the special education related services block grant must be weighted for the factors in subsection (1)(d).

(3) The superintendent of public instruction shall annually determine the per-ANB special education instructional and special education related services block grant amounts based on the prior years' trustees' expenditure data for special education instruction and related services.

(4) The superintendent of public instruction shall adopt rules necessary to implement this section.

(5) A district shall provide a 25% local contribution for special education, matching every $3 of state special education instructional and special education related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education related services grant amount to the special education cooperative, but the district is not required to match the weighted funding factors.

(6) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's special education allowable cost payment.

(7) If a district's allowable costs of special education, as verified by the trustees' reports, exceed by at least 10% the total of the special education instructional and special education related services block grant plus the required district match, the district is eligible for a 65% reimbursement of the costs that exceed the additional 10%. A district that demonstrates severe economic hardship because of exceptional special education costs may apply

to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(20) thru (22); amd. Sec. 1, Ch. 315, L. 1983; amd. Sec. 33, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 249, L. 1991; amd. Sec. 27, Ch. 767, L. 1991; amd. Secs. 22, 23, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: (Temporary version) Chapter 633 in (1) and (2) substituted "allowable cost payment" for "foundation program amount"; at end of (1)(c) substituted "this section" for "20-9-315 through 20-9-321"; in (2) deleted second sentence that read: "The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district"; deleted former (3) that read: "(3) Any amount of the special education allowable costs for a district approved under the provisions of subsection (2) that is an increase in the approved allowable costs from the previous school fiscal year and is a result of expanded programs or recalculations of the special education allowable costs base may be deposited and managed in the separate account of the miscellaneous programs fund of the district that is prescribed in subsection (4)"; in (3), in first sentence after "district", substituted "general fund budget" for "foundation program" and deleted third and fourth sentences that read: "However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the budget amendment provisions of 20-9-161(6), allowable costs for the given year may be funded in the miscellaneous programs fund by other revenue sources and added to the foundation program amount for special education for the subsequent school year under the provisions of 20-9-147. The allowable costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year"; in (4)(a) substituted "subsection (3)" for "subsection (4)"; and deleted (6) and (7) that read: "(6) The sum of the previous year special education expenses as defined in subsections (3) and (4) and the foundation program amount for current year special education as defined in subsections (1) and (2) is the special education budget for accounting purposes.

(7) The foundation program amount for special education must be added to the foundation program amount of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total foundation program amount for the district." Amendment effective July 1, 1993.

(Version effective July 1, 1994) Chapter 633 in (1) substituted "allowable cost payment" for "foundation program amount" and after "total" substituted remainder of language in (1) relating to special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, for former language that read: "estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget must be prepared on forms provided by the superintendent of public instruction and must set out for each program"; in (1)(a) substituted "district ANB student count as established pursuant to 20-9-311 and 20-9-313" for "estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431"; in (1)(b) substituted "a per-ANB amount for the special education instructional block grant" for "the number of pupils expected to be enrolled in the program"; inserted (1)(c) relating to special education related services block grant; inserted (1)(d) relating to weighted cost factors; inserted (1)(e) relating to expenditure reports; in (1)(f), after "instruction", deleted "for budget justification purposes and" and at end substituted "this section" for "20-9-315 through 20-9-321"; substituted (2) relating to special education allowable cost payments for former (2) that read: "The total amount of allowable costs approved by the superintendent of public instruction is the special education foundation program amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district"; deleted former (3) through (7) that read: "(3) Any amount of the special education allowable costs for a district approved under the provisions of subsection (2) that is an increase in the approved allowable costs from the previous school fiscal year and is a result of expanded programs or recalculations of the special education allowable costs base may be deposited and managed in the separate account of the miscellaneous programs fund of the district that is prescribed in subsection (4).

(4) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district foundation program for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of the district as provided in 20-9-507. However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the budget amendment provisions of 20-9-161(6), allowable costs for the given year may be funded in the miscellaneous programs fund by other revenue sources and added to the foundation program amount for special education for the subsequent school year under the provisions of 20-9-147. The allowable costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year.

(5) (a) The special education contingency funds in subsection (4):

(i) are biennially appropriated;

(ii) are for emergencies that may arise in the special education programs of school districts or special education cooperatives; and

(iii) may be used to fund positions that have gone unfilled for a full school fiscal year and for which state special education funds were not awarded.

(b) The board of trustees of a district or the management board of a special education cooperative may apply for contingency funding by submitting to the superintendent of public instruction, in the form prescribed by the superintendent of public instruction, written documentation that describes the need for the funds.

(6) The sum of the previous year special education expenses as defined in subsections (3) and (4) and the foundation program amount for current year special education as defined in subsections (1) and (2) is the special education budget for accounting purposes.

(7) The foundation program amount for special education must be added to the foundation program amount of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total foundation program amount for the district"; inserted (3) requiring Superintendent to annually determine per-ANB special education instructional and special education related services block grant amounts; inserted (4) requiring rulemaking by Superintendent; inserted (5) requiring district to provide 25% local match for special education; inserted (6) requiring Superintendent to determine actual district match and providing unmatched portions to revert to state; and inserted (7) relating to district eligibility for special education reimbursement. Amendment effective July 1, 1994.

Effective Date — Retroactive Applicability: Section 59(3), Ch. 633, L. 1993, provided: "(3) [Sections 23 and 33] [20-9-321 and 20-9-311] are effective July 1, 1994, and apply retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1993."

20-9-322. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. Sec. 1, Ch. 475, L. 1983; amd. Sec. 9, Ch. 337, L. 1989; amd. Sec. 34, Ch. 11, Sp. L. June 1989.

20-9-323 through 20-9-330 reserved.

20-9-331. Basic county tax and other revenues for county equalization of the elementary district BASE funding program. (1) The county commissioners of each county shall levy an annual basic tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) net proceeds taxes for new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(h) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204.

History: En. 75-6912 by Sec. 262, Ch. 5, L. 1971; amd. Sec. 1, Ch. 355, L. 1973; R.C.M. 1947, 75-6912; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 413, L. 1983; amd. Sec. 1, Ch. 418, L. 1983; amd. Sec. 2, Ch. 699, L. 1983; amd. Sec. 1, Ch. 50, L. 1985; amd. Sec. 2, Ch. 265, L. 1985; amd. Sec. 1, Ch. 552, L. 1985; amd. Sec. 13, Ch. 695, L. 1985; amd. Sec. 15, Ch. 557, L. 1987; amd. Sec. 16, Ch. 611, L. 1987; amd. Sec. 20, Ch. 655, L. 1987; amd. Secs. 35, 84, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 267, L. 1991; amd. Sec. 4, Ch. 6, Sp. L. July 1992; amd. Sec. 55, Ch. 633, L. 1993.

Compiler's Comments

Name Change — Short Form Amendment: Section 55(1), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program" in this section.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

20-9-332. Fines and penalties proceeds for elementary county equalization. All fines and penalties collected under the provisions of this title, except those collected by a justice's court, shall be paid into the county elementary equalization fund as provided by 20-9-331(2)(c). In order to implement this section and any other provision of law requiring the deposit of fines in the elementary county equalization fund, a report shall be made to the county superintendent of the county, at the close of each term, by the clerk of each district court, reporting all fines imposed and collected during the term and indicating the type of violation and the date of collection.

History: En. 75-8302 by Sec. 486, Ch. 5, L. 1971; R.C.M. 1947, 75-8302; amd. Sec. 3, Ch. 413, L. 1983; amd. Sec. 16, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Penalty for violation of school laws, 20-1-207.

20-9-333. Basic special levy and other revenues for county equalization of high school district BASE funding program. (1) The county commissioners of each county shall levy an annual basic special tax for high schools of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) net proceeds taxes for new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(e) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204.

History: En. 75-6913 by Sec. 263, Ch. 5, L. 1971; amd. Sec. 2, Ch. 355, L. 1973; R.C.M. 1947, 75-6913; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 418, L. 1983; amd. Sec. 3, Ch. 699, L. 1983; amd. Sec. 2, Ch. 50, L. 1985; amd. Sec. 3, Ch. 265, L. 1985; amd. Sec. 3, Ch. 299, L. 1985; amd. Sec. 2, Ch. 552, L. 1985; amd. Sec. 14, Ch. 695, L. 1985; amd. Sec. 17, Ch. 611, L. 1987; amd. Sec. 21, Ch. 655, L. 1987; amd. Secs. 36, 85, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 267, L. 1991; amd. Sec. 5, Ch. 6, Sp. L. July 1992; amd. Sec. 55, Ch. 633, L. 1993.

Compiler's Comments

Name Change — Short Form Amendment: Section 55(1), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program" in this section.

20-9-334. Apportionment of county equalization moneys — high school out-of-county tuition obligations. (1) The county superintendent shall calculate the apportionment of revenues deposited in the basic county tax account and the revenues deposited in the basic special tax for high schools account to the several districts of the county. The apportionments shall be known as "county equalization moneys".

(2) The county superintendent shall direct the county treasurer to deduct from the revenues available in the basic special tax for high schools account, prior to remittance of the funds to the state treasurer under the provisions of 15-1-504 and 20-9-212, the amount required for the month to pay the county's obligation for high school out-of-county tuition.

History: En. 75-6914 by Sec. 264, Ch. 5, L. 1971; amd. Sec. 19, Ch. 266, L. 1977; R.C.M. 1947, 75-6914; amd. Sec. 3, Ch. 552, L. 1985; amd. Sec. 6, Ch. 711, L. 1991; amd. Sec. 8, Ch. 765, L. 1991; amd. Sec. 6, Ch. 6, Sp. L. July 1992.

Cross-References

Duty of County Treasurer to notify Superintendent of money subject to apportionment, 7-6-2801.

County transportation reimbursement, 20-10-146.

20-9-335. Formula for apportionment of county equalization money. (1) The superintendent of public instruction shall calculate the apportionment of revenue available in the basic county tax account and in the basic special tax for high schools account in accordance with the following procedure:

(a) determine the percentage that the county equalization money available for the support of the elementary direct state aid of the districts in the county is of the total elementary direct state aid of all districts in the county;

(b) multiply the elementary direct state aid amount of each district by the percentage determined in subsection (1)(a) to determine the portion of the county equalization money available to each school district.

(2) The procedure in subsection (1) must also be applied for the high school direct state aid after the deduction of the county's obligation for high school out-of-county tuition.

(3) Territory situated within a county may not be excluded from the calculations of the county equalization money under this section solely because the territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year may not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization money reported under these procedures is the first source of revenue for financing the elementary and high school direct state aid payments.

History: En. 75-6915 by Sec. 265, Ch. 5, L. 1971; amd. Sec. 11, Ch. 137, L. 1973; amd. Sec. 1, Ch. 255, L. 1973; R.C.M. 1947, 75-6915; amd. Sec. 4, Ch. 413, L. 1983; amd. Sec. 4, Ch. 299, L. 1985; amd. Sec. 7, Ch. 6, Sp. L. July 1992; amd. Sec. 47, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (1) substituted "superintendent of public instruction" for "county superintendent"; in (1)(a), in two places, and in (1)(b), (2), and (4) substituted "direct state aid" for "foundation program"; and made minor changes in style. Amendment effective July 1, 1993.

20-9-336 through 20-9-340 reserved.

20-9-341. Definition of interest and income moneys. (1) As used in this title, the term "interest and income moneys" means the total of the following revenues, as provided for by Article X, section 5, of the 1972 Montana constitution:

(a) 95% of the interest received from the investment of the public school fund;

(b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;

(c) 95% of the income received from the leasing of or sale of timber from state school lands after any deductions that may be made under the provisions of Title 77, chapter 1, part 6; and

(d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of such revenues shall be annually credited to the public school fund.

History: En. 75-6907 by Sec. 257, Ch. 5, L. 1971; amd. Sec. 9, Ch. 137, L. 1973; R.C.M. 1947, 75-6907; amd. Sec. 3, Ch. 14, Sp. L. January 1992.

Compiler's Comments

Deletion of Termination Date: Section 9, Ch. 533, L. 1993, amended sec. 6, Ch. 14, Sp. L. January 1992, by removing the termination date for this section.

Cross-References

The Enabling Act, sec. 11.

Public school fund, Art. X, sec. 2, Mont. Const.

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

20-9-342. Deposit of interest and income moneys by state board of land commissioners. The state board of land commissioners shall annually deposit the interest and income moneys for each calendar year into the state special revenue fund for state equalization aid, provided for by 20-9-343, by the last business day of February following the calendar year in which the moneys were received.

History: En. 75-6908 by Sec. 258, Ch. 5, L. 1971; amd. Sec. 10, Ch. 137, L. 1973; R.C.M. 1947, 75-6908; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Disposition of revenues and profits from state lands, 77-1-216.

20-9-343. *(Temporary)* **Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the account in the state special revenue fund that receives revenue as required in this section plus any legislative appropriation of money from other sources for:

(a) distribution to the public schools for the purposes of payment of systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program, guaranteed tax base aid, BASE aid, state reimbursement for school facilities, and matching funds for the systemic initiative for Montana mathematics and science grant;

(b) negotiated payments authorized under 20-7-420(3) up to $500,000 per biennium; and

(c) the Montana educational telecommunications network as provided in 20-32-101.

(2) The superintendent of public instruction may spend funds appropriated from the state equalization aid account as required for the purposes of systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program, guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, negotiated payments authorized under 20-7-420(3), and the Montana educational telecommunications network, throughout the biennium, and for the biennium beginning July 1, 1993, equipment purchases that qualify as the state match for the systemic initiative for Montana mathematics and science grant.

(3) The following must be paid into the state equalization aid account for the public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-7-402;

(h) the surplus revenues collected by the counties for BASE funding program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account at the end of a fiscal year must be transferred to the general fund.

20-9-343. *(Effective July 1, 1994)* **Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the account in the state special revenue fund that receives revenue as required in this section plus any legislative appropriation of money from other sources for:

(a) distribution to the public schools for the purposes of payment of systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program, guaranteed tax base aid, BASE aid, state reimbursement for school facilities, and matching funds for the systemic initiative for Montana mathematics and science grant;

(b) negotiated payments authorized under 20-7-420(3) up to $500,000 per biennium; and

(c) the Montana educational telecommunications network as provided in 20-32-101.

(2) The superintendent of public instruction may spend funds appropriated from the state equalization aid account as required for the purposes of systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program, guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, negotiated payments authorized under 20-7-420(3), and the Montana educational telecommunications network, throughout the biennium, and for the biennium beginning July 1, 1993, equipment purchases that qualify as the state match for the systemic initiative for Montana mathematics and science grant.

(3) The following must be paid into the state equalization aid account for the public schools of the state:

(a) money allocated to state equalization from the collection of the severance tax on coal;

(b) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(c) interest and income money described in 20-9-341 and 20-9-342;

(d) money received from the state equalization aid levy under 20-9-360;

(e) income from the lottery, as provided in 23-7-402;

(f) the surplus revenues collected by the counties for BASE funding program support according to 20-9-331 and 20-9-333; and

(g) investment income earned by investing money in the state equalization aid account in the state special revenue fund.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account at the end of a fiscal year must be transferred to the general fund.

History: En. 75-6916 by Sec. 266, Ch. 5, L. 1971; amd. Sec. 12, Ch. 137, L. 1973; amd. Sec. 3, Ch. 355, L. 1973; amd. Sec. 12, Ch. 502, L. 1975; amd. Sec. 1, Ch. 356, L. 1977; R.C.M. 1947, 75-6916; amd. Sec. 15, Ch. 634, L. 1979; amd. Sec. 2, Ch. 317, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 20, Sp. L. June 1986; amd. Sec. 70, Ch. 370, L. 1987; amd. Sec. 3, Ch. 662, L. 1987; amd. Sec. 5, Ch. 666, L. 1987; amd. Sec. 37, Ch. 11, Sp. L. June 1989; amd. Sec. 5, Ch. 622, L. 1991; amd. Secs. 1, 3, Ch. 729, L. 1991; amd. Sec. 18, Ch. 787, L. 1991; amd. Sec. 6, Ch. 375, L. 1993; amd. Sec. 8, Ch. 593, L. 1993; amd. Sec. 24, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 375 inserted (1)(b) including negotiated payments authorized under 20-7-420(3) up to $500,000 per biennium; in (2) inserted "negotiated payments authorized under 20-7-420(3)"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 593 deleted former (3)(a) that read: "money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501"; deleted former (3)(b) that read: "(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501"; deleted (3)(j) that read: "(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704"; and made minor changes in style. Amendment effective July 1, 1994.

Chapter 633 in (1), in first sentence, substituted "account" for "money deposited" and after "fund" inserted "that receives revenue"; in (1)(a) after "payment of", substituted language dealing with systems development and related costs resulting from enacted legislation to administer enumerated functions for "guaranteed tax base aid and equalization of the foundation program"; in (2), after "appropriated", substituted "from the" for "for", after "aid" inserted "account", after "purposes of" substituted language dealing with systems development and related costs resulting from enacted legislation for changes in certain functions for "guaranteed tax base aid, the foundation", and after "biennium" inserted remainder of subsection relating to equipment purchases for state match for science grant; in (3), before "state", deleted "state special revenue fund for" and before "public" substituted "account for the" for "to"; and in (5), after "account", substituted "at the end of a fiscal year must be transferred to the general fund" for "in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium". Amendment effective July 1, 1993.

Style changes in (1) and (2) were slightly different. In each case, the codifier chose the most appropriate.

Cross-References

Disposal of severance taxes, 15-35-108.

Funding for special education cooperatives or joint boards, 20-7-457.

Local impact and education trust fund account created, 90-6-202.

20-9-344. Duties of board of public education for distribution of BASE aid. (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) have the power to require reports from the county superintendents, budget boards, county treasurers, and trustees as it considers necessary; and

(c) order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in 20-9-347(3), the BASE aid payment must be distributed according to the following schedule:

(a) from August to October of the school fiscal year, 10% of the direct state aid to each district;

(b) from December to April of the school fiscal year, 10% of the direct state aid to each district;

(c) in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134;

(d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and

(e) in June of the school fiscal year, one-half of the remaining payment to each district of direct state aid and on the following July 15, the remaining payment to each district of direct state aid for the school fiscal year ending on the preceding June 30.

(6) The distribution provided for in subsection (5) must occur by the last working day of each month.

History: En. 75-6917 by Sec. 267, Ch. 5, L. 1971; amd. Sec. 1, Ch. 166, L. 1973; amd. Sec. 2, Ch. 345, L. 1973; amd. Sec. 1, Ch. 346, L. 1973; amd. Sec. 1, Ch. 55, L. 1974; amd. Sec. 41, Ch. 213, L. 1975; R.C.M. 1947, 75-6917; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 6, Ch. 317, L. 1981; amd. Secs. 1, 3, Ch. 236, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 18, Sp. L. June 1986; amd. Sec. 4, Ch. 1, Sp. L. June 1989; amd. Sec. 38, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 622, L. 1991; amd. Sec. 28, Ch. 767, L. 1991; amd. Sec. 1, Ch. 1, Sp. L. July 1992; amd. Sec. 8, Ch. 6, Sp. L. July 1992; amd. Sec. 25, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 throughout section substituted "BASE" for "state equalization"; deleted former (1) that read: "The money available for state equalization aid must be distributed and apportioned to provide:

(a) an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings and grounds, and transportation; and

(b) the Montana educational telecommunications network as provided in 20-32-101"; in (2), after "aid", deleted "or order the county superintendent of schools to withhold county equalization money"; in (5), before "aid", substituted "BASE" for "foundation program payment and guaranteed tax base"; in (5)(a) substituted "October" for "May", increased amount from "8%" to "10%", and substituted "direct state aid" for "foundation program payment"; inserted (5)(b) requiring

10% of BASE aid to be distributed from December to April; in (5)(c), after "county", inserted "that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134"; deleted former (6)(d)(i) that read: "(i) the 1993 school fiscal year, one-half of the remaining foundation program payment of each district and on July 15, 1993, the remaining school fiscal year 1993 foundation program payment of each district"; in (5)(e), after "year", inserted "one-half of", after "remaining" deleted "foundation program", and after "district" inserted "of direct state aid and on the following July 15, the remaining payment to each district of direct state aid for the school fiscal year ending on the preceding June 30"; in (6), after "distribution", deleted "of foundation program payments and guaranteed tax base aid" and substituted "subsection (5)" for "subsection (6)"; and made minor changes in style. Amendment effective July 1, 1993.

20-9-345. Repealed. Sec. 7, Ch. 317, L. 1981.

History: En. 75-6917.1 by Sec. 2, Ch. 55, L. 1974; R.C.M. 1947, 75-6917.1; amd. Sec. 1, Ch. 540, L. 1981.

20-9-346. Duties of superintendent of public instruction for state and county equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state and county equalization aid by:

(1) establishing the annual entitlement of each district and county to state and county equalization aid, based on the data reported in the retirement and general fund budgets for each district that have been duly adopted for the current school fiscal year and verified by the superintendent of public instruction;

(2) for the purposes of state reimbursements for school facilities, limiting the distribution from the state equalization aid account to no more than $1 million for the school fiscal year ending June 30, 1994, and to no more than $2 million for the biennium ending June 30, 1995, to the districts that are eligible under the provisions of 20-9-366 through 20-9-371 by:

(a) determining by May 1 of each school fiscal year the number of mills levied in each district for debt service on bonds that were issued as provided in 20-9-370(2)(b)(i) or (2)(b)(ii) and that qualify for guaranteed tax base aid under the provisions of 20-9-366 through 20-9-369 and 20-9-370;

(b) based on the limitation of state equalization aid available for debt service purposes in this subsection (2), determining the percentage of state equalization aid that each eligible district must receive for the school fiscal year;

(c) distributing that amount to each eligible district for reducing the property tax for the debt service fund for the ensuing school fiscal year; and

(d) at the end of the school fiscal year ending June 30, 1994, determining whether there is an unused portion of the amount of state equalization aid appropriated in this subsection (2) to be carried into the next school fiscal year for the purposes of this subsection (2).

(3) distributing by electronic transfer the BASE aid and state advances for county equalization, for each district or county entitled to the aid, to the county treasurer of the respective county or county where the district is located, in accordance with the distribution ordered by the board of public education;

(4) keeping a record of the full and complete data concerning money available for state equalization aid, state advances for county equalization, and the entitlements for BASE aid of the districts of the state;

(5) reporting to the board of public education the estimated amount that will be available for state equalization aid; and

(6) reporting to the office of budget and program planning as provided in 17-7-111:

(a) the figures and data available concerning distributions of state and county equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed;

(d) the latest estimate of accruals of money available for state equalization aid; and

(e) the amount of state advances and repayment for county equalization.

History: En. 75-6918 by Sec. 268, Ch. 5, L. 1971; amd. Sec. 2, Ch. 166, L. 1973; R.C.M. 1947, 75-6918; amd. Sec. 39, Ch. 11, Sp. L. June 1989; amd. Sec. 26, Ch. 112, L. 1991; amd. Sec. 9, Ch. 6, Sp. L. July 1992; amd. Sec. 26, Ch. 349, L. 1993; amd. Sec. 26, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 349 in (6) substituted "office of budget and program planning as provided in 17-7-111" for "legislature as provided in 5-11-210".

Chapter 633 throughout section, after "state", inserted "and county"; in (1), at end after "instruction", deleted "and by applying the verified data under the provisions of the state equalization aid allocation procedure prescribed in 20-9-347"; inserted (2) relating to distribution of $2 million in state and county equalization aid for state reimbursement for school facilities for biennium; in (3), before "electronic", deleted "state warrant or"; and in (3) and (4), before "aid", substituted "BASE" for "state equalization". Amendment effective July 1, 1993.

20-9-347. Distribution of BASE aid and special education allowable cost payments in support of BASE funding program — exceptions. (1) The superintendent of public instruction shall:

(a) supply the county treasurer and the county superintendent with a monthly report of the payment of BASE aid in support of the BASE funding program of each district of the county;

(b) in the manner described in 20-9-344, provide for a state advance to each county in an amount that is no less than the amount anticipated to be raised for the basic county tax fund as provided in 20-9-331 and for the basic special tax fund as provided in 20-9-333;

(c) adopt rules to implement the provisions of subsection (1)(b).

(2) (a) The superintendent of public instruction is authorized to adjust the schedule prescribed in 20-9-344 for distribution of the BASE aid payments if the distribution will cause a district to register warrants under the provisions of 20-9-212(8).

(b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the superintendent of public instruction, in the manner required by the office, that the payment schedule prescribed in 20-9-344 will result in insufficient money available in all funds of the district to make payment of the district's warrants. The county treasurer shall confirm the anticipated deficit. This section may not be construed to authorize the superintendent of public instruction to exceed a district's annual payment for BASE aid.

(3) The superintendent of public instruction shall:

(a) distribute special education allowable cost payments to districts; and

(b) supply the county treasurer and the county superintendent of public instruction with a report of payments for special education allowable costs to districts of the county.

History: En. 75-6919 by Sec. 269, Ch. 5, L. 1971; R.C.M. 1947, 75-6919; amd. Sec. 40, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 6, Sp. L. July 1992; amd. Sec. 27, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 deleted former (1) that read: "(1) The superintendent of public instruction shall apportion the state equalization aid available for support of the foundation program, individually for the elementary districts of a county or the high school districts of a county, in accordance with 20-9-346 and on the basis of the following procedure:

(a) Determine the percentage that the total funds available to all counties in the state in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all counties.

(b) Determine the percentage that the total funds available in each county in support of the foundation programs in the county (excluding state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all districts of the county.

(c) Counties in which the percentage determined in subsection (1)(b) exceeds the percentage determined in subsection (1)(a) are not entitled to an apportionment of the state equalization aid in support of the foundation program.

(d) After elimination of the counties referred to in subsection (1)(c), determine the percentage that the total money available to all remaining counties in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all remaining counties.

(e) Each district of each remaining county is entitled to an apportionment of the state equalization aid in support of the foundation program equal to the difference between the percentage determined in subsection (1)(d) and the percentage determined for the county in subsection (1)(b) multiplied by the foundation program amount for the district"; in (1)(a) substituted "monthly report of the payment of BASE aid" for "report of the apportionments of state equalization aid", before "program" substituted "BASE funding" for "foundation", and after "county" deleted "and the state equalization aid in support of the foundation program must be apportioned to the districts in accordance with the report"; in (1)(c) substituted "subsection (1)(b)" for "subsection (2)(b)"; in (2)(a), before "aid", substituted "BASE" for "foundation program and guaranteed tax base" and substituted "20-9-212(8)" for "20-9-212(9)"; in (2)(b), at end, substituted "BASE aid" for "state and county equalization aid"; inserted (3) requiring Superintendent to distribute special education allowable cost payments and payment reports; and made minor changes in style. Amendment effective July 1, 1993.

20-9-348. Estimation of state equalization aid for budget purposes. The apportionment of state equalization aid shall be the second source of revenue in calculating the financing of the elementary district BASE funding program and the high school district BASE funding program. In order to allow for the estimation of the amount of money to be realized from this source of revenue when the county superintendent is estimating the general fund budget revenues, the county superintendent shall consider that the state BASE funding program revenues and county equalization moneys, together, will be capable of financing 100% of the BASE funding program.

History: En. 75-6920 by Sec. 270, Ch. 5, L. 1971; R.C.M. 1947, 75-6920; amd. Sec. 5, Ch. 299, L. 1985.

20-9-349 and 20-9-350 reserved.

20-9-351. Funding of deficiency in BASE aid. If the money available for BASE aid is not the result of a reduction in spending under 17-7-140 and is not sufficient to provide the guaranteed tax base aid required under

20-9-366 through 20-9-369 and BASE aid support determined under 20-9-347, the superintendent of public instruction shall request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of BASE aid for the elementary and high school districts for the current biennium.

History: En. 75-6921 by Sec. 271, Ch. 5, L. 1971; amd. Sec. 4, Ch. 355, L. 1973; R.C.M. 1947, 75-6921; amd. Sec. 3, Ch. 317, L. 1981; amd. Sec. 2, Ch. 540, L. 1981; amd. Sec. 4, Ch. 15, L. 1985; amd. Sec. 6, Ch. 299, L. 1985; amd. Sec. 41, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 5, Sp. L. July 1992; amd. Sec. 28, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 near beginning, before "aid", substituted "BASE" for "state equalization", before "guaranteed" deleted "foundation program schedule support determined in 20-9-348 and the", near middle, after "20-9-369", inserted "and BASE aid support determined under 20-9-347", and near end, after "funding of", substituted "BASE aid for the elementary and high school districts" for "guaranteed tax base aid and the foundation programs of the elementary or secondary schools, or both". Amendment effective July 1, 1993.

Cross-References

Supplemental appropriations, 17-7-301.

20-9-352. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. 75-6922 by Sec. 272, Ch. 5, L. 1971; amd. Sec. 5, Ch. 355, L. 1973; amd. Sec. 1, Ch. 212, L. 1975; R.C.M 1947, 75-6922; amd. Sec. 4, Ch. 317, L. 1981; amd. Sec. 3, Ch. 540, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 418, L. 1983; amd. Sec. 4, Ch. 699, L. 1983; amd. Sec. 5, Ch. 15, L. 1985; amd. Sec. 4, Ch. 265, L. 1985; amd. Sec. 15, Ch. 695, L. 1985; amd. Sec. 18, Ch. 611, L. 1987; amd. Sec. 22, Ch. 655, L. 1987; amd. Sec. 30, Ch. 83, L. 1989; amd. Sec. 86, Ch. 11, Sp. L. June 1989.

20-9-353. Additional financing for general fund — election for authorization to impose. (1) Except as limited by 20-9-308, the trustees of a district may propose to adopt a general fund budget in excess of the maximum general fund budget amount for the district.

(2) Except as provided in 20-9-308(4)(b), when the trustees of a district determine that an additional amount of financing is required for the general fund budget that is in excess of the maximum general fund budget amount, the trustees shall submit the proposition to finance the excess amount of general fund financing to the electors who are qualified under 20-20-301 to vote upon the proposition. The special election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of money to be financed, the approximate number of mills required to raise all or a portion of the money, and the purpose for which the money will be expended. The ballot must be in the following format:

PROPOSITION

Shall the district be authorized to expend the sum of (state the amount to be expended), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional financing is made)?

☐ FOR budget authority and any levy.

☐ AGAINST budget authority and any levy.

(3) If the election on any additional financing for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify any additional levy amount authorized by the special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141, to raise the amount of the additional levy.

(4) Authorization to levy an additional tax under the provisions of this section is effective for only 1 school fiscal year and must be authorized by a special election conducted before August 1 of the school fiscal year for which it is effective.

(5) If the trustees of a district are required to submit a proposition to finance a base budget amount, as provided in 20-9-308(2)(b), or an over-BASE budget amount, as provided in 20-9-308(3)(b), to the electors of the district, the trustees shall comply with the provisions of subsections (2) through (4).

History: En. 75-6923 by Sec. 273, Ch. 5, L. 1971; amd. Sec. 7, Ch. 83, L. 1971; amd. Sec. 6, Ch. 355, L. 1973; amd. Sec. 2, Ch. 214, L. 1974; amd. Sec. 1, Ch. 230, L. 1974; amd. Sec. 1, Ch. 346, L. 1974; amd. Sec. 1, Ch. 454, L. 1975; R.C.M. 1947, 75-6923; amd. Sec. 2, Ch. 72, L. 1979; amd. Sec. 5, Ch. 75, L. 1981; amd. Sec. 2, Ch. 110, L. 1985; amd. Sec. 1, Ch. 338, L. 1987; amd. Sec. 42, Ch. 11, Sp. L. June 1989; amd. Sec. 29, Ch. 767, L. 1991; amd. Sec. 29, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (1) substituted "20-9-308" for "20-9-315(2)", near end substituted "maximum general fund budget" for "foundation program and the permissive", and after "district" deleted "for any of the following purposes:

(a) building, altering, repairing, or enlarging any schoolhouse of the district;

(b) furnishing additional school facilities for the district;

(c) acquisition of land for the district;

(d) proper maintenance and operation of the school programs of the district; or

(e) severance pay for district employees"; in (2), in first sentence at beginning, inserted exception clause, substituted "maximum general fund budget" for "statutory schedule amount and the permissive", near middle, before "the excess", substituted "to finance" for "of an additional levy to raise", and at end, after "proposition", deleted "except that an election is not required to permit the school trustees to use any funds available to finance the additional amount other than those funds to be raised by the additional levy" in third sentence substituted "financed" for "raised by additional property taxation" and after "raise" inserted "all or a portion of", and in ballot, after "Shall", substituted "the district be authorized" for "a levy be made in addition to the levies authorized by law in the number of mills as may be necessary", before "the sum of" substituted "expend" for "raise", after "amount to be" substituted "expended" for "raised by additional tax levy", after "additional" substituted "financing" for "tax levy", and after "FOR" and after "AGAINST" substituted "budget authority and any" for "the"; in (3), near beginning after "additional", substituted "financing" for "levy"; inserted (5) relating to compliance by trustees; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Property tax levies, Title 15, ch. 10.
School property, Title 20, ch. 6, part 6.
School elections, Title 20, ch. 20.

20-9-354 through 20-9-359 reserved.

20-9-360. State equalization aid levy. (1) There is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204. Except as provided in subsection (2), proceeds of the levy must be remitted to the state treasurer and must be deposited to the credit of the state special revenue fund for state equalization aid to the public schools of Montana.

(2) For the benefit of each municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1990, the state treasurer shall distribute each fiscal year from the state equalization aid levy to the municipality the amount, if any, equal to the product of the incremental taxable value of the urban renewal area times the reduced school levy for the area, each calculated for the fiscal year. The reduced school levy for a fiscal year is the difference between the aggregate amount of all property tax levies for school purposes in the urban renewal area, expressed in mills, in the fiscal year ended June 30, 1989, and the aggregate amount of all property tax levies for school purposes in the area or the district, expressed in mills, in the fiscal year, including the state equalization aid levy. The state treasurer shall distribute the amounts to municipalities in two equal installments on December 31 and June 30 of the fiscal year.

History: En. Sec. 50, Ch. 11, Sp. L. June 1989; amd. Sec. 30, Ch. 767, L. 1991.

20-9-361. State and county equalization revenue — statutory appropriation. Revenue received in support of state and county equalization under the provisions of 20-9-331, 20-9-333, and 20-9-343 is statutorily appropriated, as provided in 17-7-502, to:

(1) the superintendent of public instruction to be used for county equalization and state equalization aid for the public schools, as provided by law, and must be accounted for in accordance with generally accepted accounting principles; and

(2) counties as provided in 20-9-360(2).

History: En. Sec. 51, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 729, L. 1991.

20-9-362 through 20-9-365 reserved.

20-9-366. Definitions. As used in 20-9-366 through 20-9-369, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district divided by the sum of the district's current year direct state aid and 40% of the special education allowable cost payment.

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

(3) (a) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school facility entitlement and retirement

guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(b) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 175% and divided by the total sum of either the state elementary school districts' or the high school districts' current year total direct state aid and 40% of special education allowable cost amounts.

History: En. Sec. 60, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 3, Sp. L. May 1990; amd. Sec. 7, Ch. 711, L. 1991; amd. Sec. 1, Ch. 790, L. 1991; amd. Sec. 30, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in definitions of county retirement mill value per elementary ANB, district mill value per ANB, and statewide mill value per elementary ANB, after "year", substituted "total per-ANB entitlement" for "foundation program"; inserted definition of district guaranteed tax base ratio; in definition of district mill value per ANB, after defined term, inserted "for school facility entitlement purposes"; deleted definition of permissive amount that read: ""Permissive amount" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 35% of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353"; in definition of statewide mill value per elementary ANB, near beginning before "and retirement", substituted "school facility entitlement" for "permissive"; and inserted definition of statewide elementary guaranteed tax base ratio. Amendment effective July 1, 1993.

20-9-367. Eligibility to receive guaranteed tax base aid. (1) If the district guaranteed tax base ratio of any elementary or high school district is less than the corresponding statewide elementary or high school guaranteed tax base ratio, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the general fund budget.

(2) If the county retirement mill value per elementary ANB or the county retirement mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

(3) For the purposes of 20-9-370 and 20-9-371, if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or statewide mill value per high school ANB, the district may receive guaranteed tax base aid based on the number of mills levied in support of the debt service fund.

History: En. Sec. 61, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 711, L. 1991; amd. Sec. 32, Ch. 767, L. 1991; amd. Sec. 31, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (1), near beginning, substituted "guaranteed tax base ratio" for "mill value per ANB", near middle, after "statewide", substituted "elementary or high school guaranteed tax base ratio" for "district mill value per elementary ANB or high school ANB", and near end, before "general fund", substituted "up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the" for "its permissive amount of the"; in (2), after "statewide", deleted "county"; inserted (3) relating to district qualification for guaranteed tax base aid for debt service; and made minor changes in style. Amendment effective July 1, 1993.

20-9-368. Amount of guaranteed tax base aid — reversion. (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

(3) The amount of guaranteed tax base aid that a district may receive in support of up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement budgeted within the general fund budget, and up to 40% of the special education payment is calculated in the following manner:

(a) multiply the sum of the district's direct state aid and 40% of the special education allowable cost payment by the corresponding statewide guaranteed tax base ratio;

(b) subtract the taxable valuation of the district from the product obtained in subsection (3)(a); and

(c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344.

History: En. Sec. 62, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 711, L. 1991; amd. Sec. 33, Ch. 767, L. 1991; amd. Sec. 32, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (1) and (2), before "mill", deleted "county"; in (3), near beginning after "aid", deleted "per-ANB", after "support of" substituted "up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement budgeted within the" for "its permissive amount of the", after "budget" inserted "and up to 40% of the special education payment", and after "is" substituted language in (a) through (c) relating to calculation of guaranteed tax base aid for former language that read: "the difference between the district mill value per ANB and the corresponding statewide district mill value per ANB, multiplied by the number of mills levied in support of the district's permissive amount of the general fund budget"; in (4) deleted former second sentence that read: "If the actual expenditures from the fund or portion of the fund for which guaranteed tax base aid is earmarked are less than the amount budgeted, the guaranteed tax base aid reverts in proportion to the amount budgeted but not expended";

and made minor changes in style. Amendment effective July 1, 1993.

20-9-369. Duties of superintendent of public instruction and department of revenue. (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

(a) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide and district guaranteed tax base ratios and, by May 1 of each year, with the final statewide and district guaranteed tax base ratios, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;

(b) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide, county, and district mill values per ANB and, by May 1 of each year, with the final statewide, county, and district mill values per ANB, for use in calculating the guaranteed tax base aid available to counties and districts for the ensuing school fiscal year;

(c) requiring each county and district that qualifies and applies for guaranteed tax base aid to report to the county superintendent all budget and accounting information required to administer the guaranteed tax base aid;

(d) keeping a record of the complete data concerning appropriations available for guaranteed tax base aid and the entitlements for the aid of the counties and districts that qualify;

(e) distributing the guaranteed tax base aid entitlement to each qualified county or district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement 20-9-366 through 20-9-369.

(3) The department of revenue shall provide the superintendent of public instruction by December 1 of each year a final determination of the taxable value of property within each school district and county of the state reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305.

(4) For the purposes of implementing 20-9-366 through 20-9-368 and this section for the school fiscal year beginning July 1, 1993, the superintendent of public instruction shall estimate the direct state aid for a district for the school fiscal year beginning July 1, 1993, in order to calculate the district and statewide guaranteed tax base ratios for that school fiscal year. For succeeding school fiscal years, the superintendent of public instruction shall calculate the district and statewide guaranteed tax base ratios by applying the prior year's direct state aid payment.

History: En. Sec. 63, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 790, L. 1991; amd. Sec. 34, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 in (1)(a), in two places, substituted "guaranteed tax base ratios" for "county mill values per ANB" and after "preliminary statewide" inserted "and district"; inserted (1)(b) requiring Superintendent to provide District and County Superintendent preliminary and final statewide, county, and district mill values per ANB to calculate guaranteed tax base aid; inserted (4) requiring Superintendent to estimate direct state aid for the school fiscal year beginning July 1, 1993, to calculate guaranteed tax base ratios and to use prior year's state aid payment for succeeding years; and made minor changes in style. Amendment effective July 1, 1993.

20-9-370. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "School facility entitlement" means:

(a) $220 per ANB for an elementary school district;

(b) $330 per ANB for a high school district; or

(c) $270 per ANB for an approved and accredited junior high school or middle school.

(2) "State reimbursement for school facilities" means the amount of state equalization aid distributed to a district that:

(a) is eligible for guaranteed tax base aid under the provisions of 20-9-366 through 20-9-369; and

(b) (i) for the school fiscal years beginning July 1, 1993, and July 1, 1994, has outstanding bonded indebtedness on bonds sold in the debt service fund of the district after July 1, 1991;

(ii) for the school fiscal year beginning July 1, 1995, and for succeeding school fiscal years, has outstanding bonded indebtedness on bonds sold in [and payable from] the debt service fund of the district in any year.

(3) "Total school facility entitlement" means the school facility entitlement times the total ANB for the district.

History: En. Sec. 38, Ch. 633, L. 1993.

Compiler's Comments

Code Commissioner Comment: In (2)(b)(ii), after "sold in", the Code Commissioner inserted "[and payable from]" to clarify legislative intent regarding definition of state reimbursement for school facilities.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

20-9-371. Calculation and uses of school facility entitlement amount. (1) The state reimbursement for school facilities for a district is the percentage determined in 20-9-346(2)(b) times (1-(district mill value per ANB/statewide mill value per ANB)) times the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligations on bonds that qualify under the provisions of 20-9-370(2)(b)(i) or (2)(b)(ii).

(2) For the school fiscal years beginning July 1, 1993, and July 1, 1994, the trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement for all outstanding bonded indebtedness on bonds sold in the debt service fund of the district after July 1, 1991.

(3) For the school fiscal year beginning July 1, 1995, and for succeeding school fiscal years, the trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement of all bonded indebtedness in the district debt service fund.

History: En. Sec. 39, Ch. 633, L. 1993.

Compiler's Comments

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

Part 4
School Bonds

Part Cross-References

Investment of county money, Title 7, ch. 6, part 27.

Bond issues, Title 17, ch. 5.

Pledge of school bonds to secure deposits of public funds, 17-6-103.

School bonds as permissible investment of public funds, 17-6-211.

20-9-401. Applicable laws for school district bonding. (1) The school district bonding provisions of this title and all applicable laws of the state shall govern:

(a) the issuance, refunding, and sale of school district bonds;

(b) the levying of taxes for payment of the principal and interest on school district bonds; and

(c) the redemption of bonds.

(2) Should there be a conflict between the provisions of this title and the provisions of any other law of the state, the provisions of this title shall govern.

History: En. 75-7101 by Sec. 302, Ch. 5, L. 1971; R.C.M. 1947, 75-7101.

Cross-References

Property tax levies, Title 15, ch. 10.

Refunding bonds, Title 17, ch. 5, part 3.

20-9-402. Definition of school district for bonding purposes. For the purposes of indebting an elementary district, a high school district, or a community college district by the issuance of bonds under the provisions of this title, the term "school district" shall mean any elementary district, high school district, or community college district, except the following types of high schools recognized as high school districts without a bonding authority in 20-6-101:

(1) high schools operated by an elementary district in a county that has not been divided into high school districts; or

(2) county high schools located in a county that has not been divided into high school districts by the county high school boundary commission.

History: En. 75-7102 by Sec. 303, Ch. 5, L. 1971; amd. Sec. 1, Ch. 419, L. 1973; R.C.M. 1947, 75-7102.

20-9-403. Bond issues for certain purposes. (1) The trustees of a school district may issue and negotiate bonds on the credit of the school district for the purpose of:

(a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, and/or obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of said buildings for school purposes;

(b) buying a school bus or buses;

(c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; or

(e) funding a judgment against the district, including the repayment of tax protests lost by the district.

(2) Any money realized from the sale of any bonds issued on the credit of a high school district shall not be used for any of the above purposes in an elementary school district, and such money may be used for any of the above purposes for a junior high school but only to the extent that the 9th grade of the high school is served thereby.

History: En. 75-7103 by Sec. 304, Ch. 5, L. 1971; amd. Sec. 1, Ch. 76, L. 1973; amd. Sec. 1, Ch. 189, L. 1973; R.C.M. 1947, 75-7103; amd. Sec. 23, Ch. 658, L. 1987; amd. Sec. 8, Ch. 213, L. 1989.

Cross-References

Vote unnecessary if bond issue authorized, 20-6-603.

20-9-404. Contracts and bonds for joint construction. The trustees of a school district may enter into a contract with the trustees of any school district within the county or with any school district in an adjoining county to provide for the joint construction of vocational-technical secondary schools upon such terms and conditions as may be mutually agreed upon between such districts. The trustees of any district executing a contract in accordance with this section may levy taxes and issue bonds for the purpose of constructing the facilities authorized by this section.

History: En. 75-7103.1 by Sec. 1, Ch. 371, L. 1975; R.C.M. 1947, 75-7103.1.

Cross-References

Sources of financing for vocational-technical center budgets, 20-16-202.

Vocational-technical center funding, 20-16-204.

20-9-405. Proportional joint ownership — disposition of moneys. The vocational-technical secondary school constructed under 20-9-404 shall be jointly owned by the school districts contributing to its construction in proportion to the contribution of each district. The sale or other disposition of a district's interest in the school shall be made in accordance with 20-6-604. Moneys received from the sale or disposition of a district's interest in a vocational-technical secondary school shall be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.

History: En. 75-7103.2 by Sec. 2, Ch. 371, L. 1975; R.C.M. 1947, 75-7103.2.

20-9-406. Limitations on amount of bond issue. (1) (a) Except as provided in subsection (1)(c), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(c), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation as ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness. The total indebtedness of the high school district with an attached elementary district must be limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes.

(c) The maximum amount for which an elementary district or a high school district that qualifies for guaranteed tax base aid under the provisions of 20-9-367 may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the corresponding statewide mill value per

ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the statewide mill value per elementary ANB times 1,000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1,000 times the high school ANB of the district.

(2) The maximum amounts determined in subsection (1), however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to bonds issued for the repayment of tax protests lost by the district. All bonds issued in excess of the amount are void, except as provided in this section.

(3) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(4) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(1), (2); amd. Sec. 61, Ch. 614, L. 1981; amd. Sec. 12, Ch. 213, L. 1989; amd. Sec. 7, Ch. 555, L. 1991; amd. Sec. 34, Ch. 767, L. 1991; amd. Sec. 35, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 633 at beginning of (1)(a) and (1)(b) inserted exception clause; deleted (1)(a)(i) through (1)(a)(iii) that read: "(i) the taxable value of coal gross proceeds as determined for county bonding purposes in 15-23-703(2);

(ii) the taxable value of oil and gas net proceeds as determined for county bonding purposes in 15-23-607(3); and

(iii) the amount of the value of any other oil and gas production occurring after December 31, 1988, multiplied by 60%"; in (1)(b), in second sentence before "must", deleted "as represented by the issuance of bonds"; inserted (1)(c) relating to district maximum bond indebtedness; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

20-9-407. Industrial facility agreement for bond issue in excess of maximum. (1) In a school district within which a new major industrial facility which seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the 45% limitation prescribed in 20-9-406. Under such an agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation prescribed in this section by a maximum of 45% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation shall be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value shall be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class five property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, so much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit shall as a total amount be equal to the amount which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(3) thru (5); amd. Sec. 26, Ch. 693, L. 1979; amd. Sec. 3, Ch. 15, L. 1985.

Cross-References

ANB defined, 20-1-101.

Educational impact statements, 20-1-208.

Calculation of average number belonging, 20-9-311.

20-9-408. Definition of forms of bonds. As used in this title, unless the context clearly indicates otherwise:

(1) "amortization bonds" means the form of bonds on which a part of the principal must be paid each time interest becomes payable. The part payment of principal increases at each installment in the same amount that the interest decreases. The combined interest and principal due on each due date remains the same until the bonds are paid. The final payment may vary from prior payments in the amount resulting from disregarding fractional cents in prior payments.

(2) "serial bonds" means a bond issue payable in annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding three times the principal amount of the bonds maturing in the immediately preceding installment.

History: En. 75-7105 by Sec. 306, Ch. 5, L. 1971; R.C.M. 1947, 75-7105; amd. Sec. 7, Ch. 631, L. 1983; amd. Sec. 7, Ch. 256, L. 1989.

20-9-409. Form of bond to be issued. All bonds issued by a school district shall be amortization bonds unless serial bonds, in the judgment of the trustees, will be more advantageous to the school district and can be sold at a comparatively reasonable rate of interest.

History: En. 75-7106 by Sec. 307, Ch. 5, L. 1971; R.C.M. 1947, 75-7106.

20-9-410. Limitation of term and interest — timing for redemption. (1) School district bonds may not be issued for a term longer than 20 years, except that bonds issued to refund or redeem outstanding bonds may not be issued for a term longer than 10 years unless the unexpired term of the bonds to be refunded or redeemed is in excess of 10 years, in which case the refunding or redeeming bonds may be issued for the unexpired term. All bonds issued for a longer term than 5 years must be redeemable at the option of the school district on any interest payment date after one-half of the term for which they were issued has expired, and it must be so stated on the face of the bonds. The interest must be as provided under 17-5-102 and must be payable semiannually.

(2) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the school district first levies taxes to pay the principal and interest on the bonds.

History: En. 75-7107 by Sec. 308, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1971; amd. Sec. 3, Ch. 284, L. 1973; R.C.M. 1947, 75-7107; amd. Sec. 11, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 71, Ch. 370, L. 1987; amd. Sec. 8, Ch. 256, L. 1989.

20-9-411. Dates of issue and payments. In order that the dates of payment of installments on school district bond issues may coincide as nearly as possible with the largest monthly tax collections, all school district bonds shall preferably bear a date of some day in June or December. For this reason, the bonds may be dated back not more than 5 months from the time of the actual sale, but no interest shall be charged on these bonds before they have been delivered to the purchaser and payment has been made by the purchaser. Interest accrued on such bonds according to their terms at the time of delivery shall either be refunded by the purchaser or deducted from the first interest payments. The failure to date such bonds in June or December shall not affect their validity.

History: En. 75-7108 by Sec. 309, Ch. 5, L. 1971; R.C.M. 1947, 75-7108.

20-9-412. Issuance of refunding bonds without an election. (1) Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue refunding bonds, the trustees, at a regular meeting or a special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be redeemed;

(b) the reasons for issuing new bonds; and

(c) the term and details of the new bond issue.

(2) After the adoption of the resolution, the trustees shall:

(a) sell the bonds at a private negotiated sale; or

(b) at their option, give notice of the sale of the new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election and sell the new bonds in open competitive bidding, by written bids or by sealed bids.

(3) Except for bonds refunded by a school district under the provisions of Title 17, chapter 5, part 16, including any variable rate finance program so authorized, bonds may not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least 1/2 of 1% per annum less than the rate of interest in the bonds to be refunded or redeemed.

(4) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, provided the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state. Funds deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on the dates and bear interest at the rates and payable on the dates required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption, and to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium. The escrow account must be irrevocably appropriated to the payment of the principal of and interest and redemption premium, if any, on the refunded bonds. Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal of or interest on the bonds due prior to issuance of the refunding bonds may be appropriated by the district to the escrow account. The school district may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds refunded pursuant to this part are not to be considered outstanding for purposes of 20-9-406 or any other debt limitation.

History: En. 75-7109 by Sec. 310, Ch. 5, L. 1971; R.C.M. 1947, 75-7109; amd. Sec. 6, Ch. 647, L. 1983; amd. Sec. 1, Ch. 158, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 158 in (3), at beginning, inserted exception clause regarding bonds refunded by a school district; and made minor changes in style. Amendment effective March 24, 1993.

Cross-References

Counties — advance refunding bonds, 7-7-2316.

Cities — advance refunding bonds, 7-7-4316.

Refunding bonds, Title 17, ch. 5, part 3.

20-9-413 through 20-9-420 reserved.

20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction. A school district shall not issue bonds for any purpose other than that provided in 15-1-402 and 20-9-412 unless the issuance of bonds has been authorized by the qualified electors of the school district at an election called for the purpose of considering a proposition to issue such bonds. A school district bond election shall be called by a resolution as prescribed under the provisions of 20-20-201 when:

(1) the trustees, of their own volition, adopt a resolution to that effect; or

(2) the trustees have received a petition which asks that an election be held to consider a bond proposition and which has been validated under the provisions of 20-9-425.

History: En. 75-7110 by Sec. 311, Ch. 5, L. 1971; R.C.M. 1947, 75-7110; amd. Sec. 9, Ch. 213, L. 1989.

Cross-References

Mail ballot elections prohibited, 13-19-104.

School elections, Title 20, ch. 20.

20-9-422. Additional requirements for trustees' resolution calling bond election. In addition to the requirements for calling an election that are prescribed in 20-20-201 and 20-20-203, the trustees' resolution calling a school district bond election shall:

(1) fix the exact amount of the bonds proposed to be issued, which may be more or less than the amounts estimated in a petition;

(2) fix the maximum number of years in which the proposed bonds would be paid; and

(3) in the case of initiation by a petition, state the essential facts about the petition and its presentation.

History: En. 75-7111 by Sec. 312, Ch. 5, L. 1971; R.C.M. 1947, 75-7111.

20-9-423. Form, contents, and circularization of petition proposing school district bond election. Any petition for the calling of an election on the proposition of issuing school district bonds shall:

(1) plainly state each purpose of the proposed bond issue and the estimated amount of the bonds that would be issued for each purpose;

(2) be signed by not less than 20% of the school district electors qualified to vote under the provisions of 20-20-301 in order to constitute a valid petition;

(3) be a single petition or it may be composed of more than one petition, all being identical in form, and after being circulated and signed, they shall be fastened together to form a single petition when submitted to the county registrar;

(4) be circulated by any one or more qualified electors of the school district; and

(5) contain an affidavit of each registered elector circulating a petition attached to the portion of the petition he circulated. Such affidavit shall attest to the authenticity of the signatures and that the signers knew the contents of the petition at the time of signing it.

History: En. 75-7112 by Sec. 313, Ch. 5, L. 1971; amd. Sec. 8, Ch. 83, L. 1971; R.C.M. 1947, 75-7112.

20-9-424. Validation of petition — election administrator's certificate. (1) The petitioners for a school district bond election shall submit their petition to the county election administrator of the county where the school district is located for validation of the signatures on the petition. The county election administrator shall examine the petition and attach or endorse thereon a certificate which shall state:

(a) the total number of electors of the school district who are, at the time, qualified to vote under the provisions of 20-20-301;

(b) which and how many of the individuals whose names are subscribed to the petition possess the qualifications to vote on a bond proposition; and

(c) whether the number of qualified signers established in subsection (1)(b) is more or less than 20% of the total number of registered electors established in subsection (1)(a).

(2) After completing the examination, the county election administrator shall immediately send the petition and his certificate to the school district. The county election administrator shall not receive compensation for the examination of school district bond petitions.

History: En. 75-7113 by Sec. 314, Ch. 5, L. 1971; amd. Sec. 9, Ch. 83, L. 1971; R.C.M. 1947, 75-7113; amd. Sec. 354, Ch. 571, L. 1979.

Cross-References

Local election administrator, Title 13, ch. 1, part 3.

20-9-425. Trustees' consideration of validated petition proposing bond election. When a school district receives a school district bond petition from the county registrar, a meeting of the trustees shall be called for the consideration of the petition. The trustees shall be the judges of the adequacy of the petition, and their findings shall be conclusive against the school district in favor of the innocent holder of bonds issued pursuant to the election called and held by reason of the presentation of such petition. The petition shall be valid if the trustees find that it is in proper form and bears the signatures of not less than 20% of the school district electors who are qualified to vote under the provisions of 20-20-301.

History: En. 75-7114 by Sec. 315, Ch. 5, L. 1971; amd. Sec. 10, Ch. 83, L. 1971; R.C.M. 1947, 75-7114.

Cross-References

Trustees' meetings and quorum, 20-3-322.

20-9-426. Preparation and form of ballots for bond election. The school district shall cause ballots to be prepared for all bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots shall be prepared for each purpose. All such ballots shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized to issue and sell bonds of this school district in the amount of .... dollars ($....), bearing interest at a rate not more than .... percent (....%) per annum, payable semiannually, during a period not more than .... years, for the purpose .... (here state the purpose the same way as in the notice of election)?

☐ BONDS — YES.

☐ BONDS — NO.

History: En. 75-7115 by Sec. 316, Ch. 5, L. 1971; amd. Sec. 39, Ch. 234, L. 1971; R.C.M. 1947, 75-7115; amd. Sec. 12, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

Cross-References

Form of ballot for consolidation election with assumption of bonded indebtedness, 20-6-206.

20-9-427. Notice of bond election by separate purpose. (1) Any school district bond election shall be conducted in accordance with the school election provisions of this title, except that the election notice required therein shall be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. .... of .... County, state of Montana, that pursuant to a certain resolution duly adopted at a meeting of the board of trustees of said school district held on the .... day of ...., A.D., 19.., an election of the registered electors of School District No. .... of .... County, state of Montana, will be held on the .... day of ...., A.D., 19.., at .... for the purpose of voting upon the question of whether or not the trustees shall be authorized to issue and sell bonds of said school district in the amount of .... dollars ($....), bearing interest at a rate not more than .... percent (....%) per annum, payable semiannually, for the purpose of .... (here state purpose). The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees. The bonds to be issued, whether amortization or serial bonds, will be payable in installments over a period not exceeding .... (state number) years.

The polls will be open from .... o'clock ....m. and until .... o'clock ....m. of the said day.

Dated and posted this .... day of ...., A.D., 19...

. . . .
Chairman, School District No. . . .
of . . . . County
Address . . . .

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose shall be separately stated in the notice, together with the proposed amount of bonds therefor.

History: En. 75-7116 by Sec. 317, Ch. 5, L. 1971; amd. Sec. 40, Ch. 234, L. 1971; amd. Sec. 1, Ch. 176, L. 1973; R.C.M. 1947, 75-7116; amd. Sec. 13, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

Cross-References

Form of ballot for consolidation election with assumption of bonded indebtedness, 20-6-206.

School elections, Title 20, ch. 20.

20-9-428. Determination of approval or rejection of proposition at bond election. (1) When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:

(a) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for such school bond election;

(b) determine the total number of qualified electors who voted at the school bond election from the tally sheet or sheets for such election;

(c) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(b) by the amount determined in subsection (1)(a); and

(d) when the calculated percentage in subsection (1)(c) is 40% or more, the school bond proposition shall be deemed to have been approved and adopted if a majority of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or

(e) when the calculated percentage in subsection (1)(c) is more than 30% but less than 40%, the school bond proposition shall be deemed to have been approved and adopted if 60% or more of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or

(f) when the calculated percentage in subsection (1)(c) is 30% or less, the school bond proposition shall be deemed to have been rejected.

(2) If the canvass of the vote establishes the approval and adoption of the school bond proposition, the trustees shall issue a certificate proclaiming the passage of such proposition and the authorization to issue bonds of the school district for the purposes specified on the ballot for such school district bond election.

History: En. 75-7117 by Sec. 318, Ch. 5, L. 1971; amd. Sec. 11, Ch. 83, L. 1971; R.C.M. 1947, 75-7117.

Cross-References

Cancellation and challenge of voter registration, Title 13, ch. 2, part 4.

Challenge of elector's right to vote, Title 13, ch. 13, part 3.

General canvassing requirements, Title 13, ch. 15.

Determination of annexation election with assumption of bonded indebtedness, 20-6-206.

20-9-429. Trustees' resolution to issue school district bonds. Within 60 days after the date of the election certificate or as soon thereafter as is practical in the judgment of the trustees, the trustees shall adopt a resolution providing for the issuance of bonds of the school district. Such resolution also shall specify:

(1) the number of series or installments in which the bonds are to be issued;

(2) the amount of bonds to be issued;

(3) the maximum rate of interest;

(4) the purpose or purposes of the issue;

(5) the date the issue will bear;

(6) the period of time through which the issue will be paid;

(7) the manner of execution of the bonds;

(8) that amortization bonds will be preferred but also fix the denomination of serial bonds; and

(9) the date and time that the sale of the bonds shall be conducted.

History: En. 75-7118 by Sec. 319, Ch. 5, L. 1971; R.C.M. 1947, 75-7118.

20-9-430. Notice of sale of school district bonds. The trustees shall cause the notice of the sale of the bonds to be given. The notice shall state the purpose for which the bonds are to be issued and the amount proposed to be issued and shall be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No. .... of .... County, state of Montana, that the trustees will on the .... day of...., 19.., at the hour of .... o'clock ....m. at ...., in the school district, sell to the highest and best bidder for cash either amortization or serial bonds of the school district in the total amount of .... dollars ($....), for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the trustees.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the trustees may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the school district).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., and will bear interest at a rate not exceeding ....% per annum commencing on the .... day of .... (month), 19.., and payable semiannually on the .... day of .... (month) and .... (month) in each year thereafter and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than their par value with accrued interest, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The bonds shall be sold in open competition bidding, by written bids, or by sealed bids. The trustees reserve the right to reject any and all bids and to sell the bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners must be accompanied by money, a certified check, cashier's check, bank money order, or bank draft drawn and issued by a national banking association located in Montana or by any banking corporation incorporated under the laws of Montana, in the sum of .... dollars ($....) payable to the order of the district, which will be forfeited by the successful bidder in the event that he shall refuse to purchase the bonds.

All bids should be addressed to the undersigned district.

. . . .
Chairman, School District No. . . .
of . . . . County
Address: . . . .

ATTEST:

Subscribed and sworn to before me this .... day of ....., 19..; .... Notary Public for the State Residing at ...., Montana. My Commission expires ....

History: En. 75-7119 by Sec. 320, Ch. 5, L. 1971; amd. Sec. 41, Ch. 234, L. 1971; amd. Sec. 23, Ch. 266, L. 1977; R.C.M. 1947, 75-7119; amd. Sec. 14, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 8, Ch. 631, L. 1983.

20-9-431. Publication of notice of sale of school district bonds. (1) The trustees shall cause a copy of the notice of sale of the bonds to be published as provided in 17-5-106 in a newspaper as determined by the trustees.

(2) If the bond issue to be sold is $10,000 or more, the trustees may cause a brief notice to be published in some newspaper in the city of New York.

History: En. 75-7120 by Sec. 321, Ch. 5, L. 1971; R.C.M. 1947, 75-7120; amd. Sec. 6, Ch. 384, L. 1979; amd. Sec. 4, Ch. 173, L. 1987.

20-9-432. Sale of school district bonds. (1) The trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds shall be sold at not less than par with accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the trustees shall take into consideration not only the rate of interest demanded on each kind but also every other known element affecting the total cost of the bonds to the district when paid in full. The trustees shall accept the bid which they shall judge most advantageous to the school district. Consultants' fees and attorney fees may be paid to any person or corporation for assisting in the proceedings or in the preparation of the bonds or in negotiating the sale. The trustees are authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the school district, except that such bonds shall not be sold at less than par with accrued interest to date of delivery.

(2) The trustees may cooperate and combine with other school districts within the same county for the purpose of preparing and negotiating for sale of bond issues if, in the opinion of the trustees, such cooperation or combination will facilitate the sale of school district bonds under more advantageous terms or with lower interest rates. Provided, however, that bond issues prepared or negotiated for sale under this section shall not be combined for any other purpose but shall be entered separately on the books of the county treasurer and shall be otherwise treated as separate bond issues.

History: En. 75-7121 by Sec. 322, Ch. 5, L. 1971; amd. Sec. 10, Ch. 234, L. 1971; amd. Sec. 1, Ch. 66, L. 1974; R.C.M. 1947, 75-7121; amd. Sec. 9, Ch. 631, L. 1983.

20-9-433. Form and printing of school district bonds. (1) It is not necessary for the trustees to prescribe the detailed form of the bonds to be issued, but the bonds must conform to all legal requirements for their payment whether they are issued as amortization or serial bonds. The bonds and coupons shall be issued in the name of the school district and shall be executed by the chairman of the trustees and the school district clerk in accordance with 2-16-114. If the bonds are purchased by the board of investments, all payments of principal or interest shall be made at the office of the state treasurer.

(2) The trustees shall cause the bonds, with the attached coupons, to be printed at the expense of the school district at the lowest commercial rates.

History: En. 75-7122 by Sec. 323, Ch. 5, L. 1971; R.C.M. 1947, 75-7122; amd. Sec. 7, Ch. 384, L. 1979.

Cross-References

County printing, Title 7, ch. 5, part 24.

20-9-434. Registration of school district bonds by county treasurer and copy for preservation. (1) When the school district bonds have been duly executed by the chairman of the trustees and the school district clerk, all such bonds shall be registered by the county treasurer in his bond registration book before such bonds are delivered to the purchaser. The bond registration shall show:

(a) the number and amount of each bond;
(b) the date of issue;
(c) the redeemable date of each bond;
(d) the name of the purchaser; and
(e) the amount and due date of all payments required on the bonds.

(2) The trustees shall provide the county treasurer with an unsigned and canceled printed copy of each issue of school district bonds for preservation in the office of the county treasurer.

History: En. 75-7123 by Sec. 324, Ch. 5, L. 1971; R.C.M. 1947, 75-7123.

20-9-435. Delivery of school district bonds and disposition of sale moneys. (1) After the school district bonds have been registered, the county treasurer shall:

(a) when the board of investments has purchased the bonds, forward the bonds to the board that, in turn, shall send the bonds to the state treasurer and shall pay the bonds in the manner provided by law; or

(b) if the purchaser is anybody other than the board of investments, deliver the bonds to the purchaser when full payment of the bonds has been made by the purchaser.

(2) If any of the trustees fails or refuses to pay into the proper county treasury the money arising from the sale of a bond, the trustee is guilty of a felony and shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years or by a fine of not more than $50,000, or both.

(3) All money realized from the sale of school district bonds must be paid to the county treasurer. The county treasurer shall credit the money to the building fund of the school district issuing the bonds, except money realized for accrued interest or the purposes defined in 20-9-403(1)(c) and (1)(d) must be deposited in the debt service fund and money realized for the purposes authorized in 20-9-403(1)(e) must be deposited in a fund, as provided for in 2-9-316, to pay a final judgment against the school district. The money realized from the sale of school district bonds must be immediately available to the school district, and the trustees may expend the money without budgeted authorization only for the purposes for which the bonds were authorized by the school district bond election. Under the provisions of 7-6-2802, the trustees may invest the money for which there is no immediate demand and the interest earned by investment must be used in the manner provided in 7-6-2802. After the full accomplishment of the purpose or purposes of a bond issue, the excess money realized from the bond issue must be transferred to the debt service fund of the school district to be used for the redemption or purchase of bonds of the issue.

History: En. 75-7124 by Sec. 325, Ch. 5, L. 1971; R.C.M. 1947, 75-7124; amd. Sec. 8, Ch. 384, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 9, Ch. 568, L. 1991; amd. Sec. 35, Ch. 767, L. 1991.

20-9-436. County attorney to assist in the proceedings. The trustees of any school district conducting bond proceedings shall prepare and maintain a transcript of their bond proceedings. It is a part of the official duties of the county attorney of every county of this state to advise and assist the trustees of each school district of his county in its bond proceedings. Before any transcript of school district bond proceedings is sent to the board of investments, he shall carefully examine such transcript, and the transcript may not be sent until he has attached his opinion to the transcript that the proceedings are in full compliance with law. The trustees of any school district, however, may, upon consent of the county attorney, employ any attorney licensed in Montana to assist the county attorney in the performance of his duties.

History: En. 75-7125 by Sec. 326, Ch. 5, L. 1971; amd. Sec. 1, Ch. 263, L. 1971; R.C.M. 1947, 75-7125; amd. Sec. 9, Ch. 384, L. 1979.

Cross-References

Conflict of interest, 20-1-205.

20-9-437. School district liable on bonds. The full faith, credit, and taxable resources of every school district issuing bonds under the provisions of this title are hereby solemnly pledged for the repayment of such bonds with interest according to their terms. For the purpose of making the provisions of this part enforceable, every school district is hereby declared to be a body corporate which may sue and be sued by or in the name of the trustees of such school district.

History: En. 75-7126 by Sec. 327, Ch. 5, L. 1971; R.C.M. 1947, 75-7126.

Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

20-9-438. Preparation of debt service fund budget — operating reserve. (1) The trustees of each school district having outstanding bonds shall include in the debt service fund of the preliminary budget adopted in accordance with 20-9-113 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of the bonds and the redemption plans of the trustees.

(2) The trustees shall also include in the debt service fund of the preliminary budget:

(a) the amount of money necessary to pay the special improvement district assessments levied against the school district that become due during the ensuing school fiscal year; and

(b) a limited operating reserve for the school fiscal year following the ensuing school fiscal year as provided in subsection (3).

(3) At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year fund balance of the debt service fund to be earmarked as a limited operating reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations that must be paid from July 1 through November 30 of the school fiscal year following the ensuing school fiscal year. Any portion of the debt service fund end-of-the-year fund balance not earmarked for limited operating reserve purposes must be reappropriated to be used for property tax reduction as provided in 20-9-439.

(4) The county superintendent shall compare the preliminary budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in his statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the preliminary budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the preliminary budget. The amount confirmed or revised by the county superintendent is the

final budget expenditure amount for the debt service fund of the school district.

History: En. 75-7127 by Sec. 328, Ch. 5, L. 1971; amd. Sec. 2, Ch. 432, L. 1975; R.C.M. 1947, 75-7127; amd. Sec. 1, Ch. 132, L. 1987; amd. Sec. 36, Ch. 767, L. 1991.

20-9-439. Computation of net levy requirement — procedure when levy inadequate. (1) The county superintendent shall compute the levy requirement for each school district's debt service fund on the basis of the following procedure:

(a) Determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state reimbursement for school facilities distributed to a qualified district under the provisions of 20-9-346, 20-9-370, and 20-9-371; and

(iv) any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from such sources as legally authorized money transfers into the debt service fund or from rental income, excluding any guaranteed tax base aid.

(b) Subtract the total amount available to reduce the property tax, determined in subsection (1)(a), from the final budget for the debt service fund as established in 20-9-438.

(2) The net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for such purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any

costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county.

History: En. 75-7128 by Sec. 329, Ch. 5, L. 1971; R.C.M. 1947, 75-7128; amd. Sec. 2, Ch. 132, L. 1987; amd. Sec. 37, Ch. 767, L. 1991; amd. Sec. 8, Ch. 133, L. 1993; amd. Sec. 36, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 133 in (2) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 633 inserted (1)(a)(iii) relating to state reimbursement for school facilities distributed to qualified district; in (1)(a)(iv), before "anticipated", inserted "including money from federal sources" and at end, after "income", inserted "excluding any guaranteed tax base aid"; in (1)(b), after "budget", deleted "expenditure amount"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Property tax levies, Title 15, ch. 10.
Mandamus, Title 27, ch. 26.

20-9-440. Payment of debt service obligations — termination of interest. (1) The county treasurer shall maintain a separate debt service fund for each school district and shall credit all tax moneys collected for debt service to such fund and use the moneys credited to such fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.

(2) The county treasurer shall pay from the debt service fund all amounts of interest and principal on school district bonds as such interest or principal becomes due when the coupons or bonds are presented and surrendered for payment and shall pay all special improvement district assessments as the same become due. If the bonds are held by the state of Montana, then all payments shall be remitted to the state treasurer who shall cancel the coupons or bonds and return such coupons or bonds to the county treasurer with his receipt. If the bonds are not held by the state of Montana and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due for interest or principal to such bank or financial institution for payment against the surrender of the canceled coupons or bonds.

(3) Whenever any school district bond or installment on school district bonds shall become due and payable, interest shall cease on such date unless sufficient funds are available to pay such bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on such bond or installment shall continue until payment is made.

(4) Any installment on interest and principal on bonds held by the state that is not promptly paid when due shall draw interest at an annual rate of 6% from the date due until actual payment, irrespective of the rate of interest on the bonds.

History: En. 75-7129 by Sec. 330, Ch. 5, L. 1971; amd. Sec. 3, Ch. 432, L. 1975; R.C.M. 1947, 75-7129.

Cross-References

Administration of finances, Title 20, ch. 9, part 2.

20-9-441. Redemption of bonds — investment of debt service fund moneys. (1) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more bonds of such school district held by the state of Montana, the county treasurer shall apply such money in payment of as many of such bonds as can be paid and redeemed. The county treasurer shall give notice not less than 30 days before the next interest due date to the board of investments that on such interest due date such bonds will be paid. Before such interest due date, the county treasurer shall remit to the state treasurer the amount of money that is necessary to pay the bonds that are being redeemed and the interest due on such bonds. When the state treasurer receives such payment, he shall cancel such bonds and any unpaid coupons of such bonds and return the canceled bonds and coupons to the county treasurer.

(2) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more optional bonds of such school district not held by the state of Montana, not yet due but then redeemable or becoming redeemable on the next interest due date, the county treasurer shall apply such available money in payment of as many of such bonds as can be paid and redeemed. The county treasurer shall give notice to the holder of the bonds, if known to him, or to any bank or financial institution at which the bonds are payable, at least 30 days before the next interest due date, that the bonds will be paid and redeemed on such date. If the bonds are payable at some bank or financial institution, the county treasurer shall remit to the bank or financial institution, before such interest due date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for payment and redemption on such interest due date, the accrual of interest shall cease on such interest due date.

(3) Whenever there is money available in any school district debt service fund sufficient to pay and redeem one or more outstanding bonds not yet due or redeemable and not held by the state of Montana, the trustees of such school district may direct the county treasurer to purchase such bonds of the district if this can be done at not more than par and accrued interest or at such reasonable premium as the trustees may feel justified in paying, but in no case exceeding 6%.

(4) Whenever the trustees cannot purchase outstanding bonds of the school district at a reasonable price, the available debt service fund money shall be invested by the trustees under the provisions of 20-9-213(4). Such investments shall be sold in ample time before the debt service fund money is required for the payment of the bonds of the school district.

History: En. 75-7130 by Sec. 331, Ch. 5, L. 1971; R.C.M. 1947, 75-7130; amd. Sec. 10, Ch. 384, L. 1979.

20-9-442. Entries of payments and notification of school district. The county treasurer shall make the necessary entries of all payments of interest and principal on his bond registration record and shall promptly notify the clerk of the school district when such payments are made. The county treasurer also shall deliver the canceled coupons and bonds to the county clerk at the end of each month. The county clerk shall file such canceled coupons and bonds in his office.

History: En. 75-7131 by Sec. 332, Ch. 5, L. 1971; R.C.M. 1947, 75-7131.

20-9-443. Disposition of remaining debt service fund. When all of the bonds and bond interest of any school district have been fully paid, all money remaining in the debt service fund for such school district and all moneys which may come into such debt service fund from the payment of the delinquent taxes shall be transferred by the county treasurer to the general fund of such school district.

History: **En. 75-7132 by Sec. 333, Ch. 5, L. 1971; R.C.M. 1947, 75-7132.**

20-9-444. Liability of officers for failure to provide fund for payment of bonds. When the trustees of a school district are required by law to provide, by a levy of taxes or by certifying the amount of money required or otherwise, a sinking fund or fund required to pay at maturity any bonds issued or created after February 6, 1923, such trustees are jointly and severally liable to the school district which they represent if they fail to perform any duties so required by law, as specified in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty. However, whenever any such board of trustees fails or neglects to perform any such duty, no minority member of the board who moved the board or voted in favor of performance of such duty may be held liable.

History: **En. Sec. 1, Ch. 5, L. 1923; re-en. Sec. 463.1, R.C.M. 1935; R.C.M. 1947, 59-534; amd. Sec. 11, Ch. 384, L. 1979.**

Cross-References

Penalty for violation of school laws, 20-1-207.

Trustee removal, 20-3-310.

Personal liability of trustees, 20-3-332.

20-9-445. Liability for misuse of bond payment fund. Any person or persons who shall take, use, appropriate, or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the county, city, school district, irrigation district, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: **En. Sec. 2, Ch. 5, L. 1923; re-en. Sec. 463.2, R.C.M. 1935; R.C.M. 1947, 59-535.**

Cross-References

Penalty for violation of school laws, 20-1-207.

Trustee removal, 20-3-310.

Personal liability of trustees, 20-3-332.

20-9-446. Duty of county attorney to prosecute. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created by 20-9-444 or 20-9-445. Such actions shall be tried as civil actions at law.

History: **En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.**

Cross-References

Conflict of interest, 20-1-205.

20-9-447 through 20-9-450 reserved.

20-9-451. County bonding for county high school not placed in high school district. Sections 20-9-452 through 20-9-456 shall be used for the purposes of indebting a county for county high school facilities when the county high school in such county has not been placed in a high school district by the high school boundary commission of the county. The provisions of such sections shall not be available to any county high school that has been placed in a high school district or to any other high school or district.

History: **En. 75-7133 by Sec. 334, Ch. 5, L. 1971; R.C.M. 1947, 75-7133.**

Cross-References

Establishment of high school districts in a county, 20-6-303.

High school boundary commission — procedure for boundary change, 20-6-304.

20-9-452. Purposes and petition for county high school bonds. (1) Any county where a county high school that has not been placed in a high school district is located may become indebted by the issuance of bonds for the purposes of:

(a) purchasing or erecting a building or buildings for high school purposes;

(b) remodeling, enlarging, or repairing a building or buildings for high school purposes;

(c) purchasing equipment for high school purposes;

(d) purchasing, erecting, or equipping a high school dormitory or gymnasium;

(e) purchasing a suitable site or sites for such high school building; or

(f) refunding or redeeming any outstanding bonds originally issued for any of the foregoing purposes.

(2) In order to initiate any bonding proposition for the above purposes:

(a) the trustees of a county high school may initiate and adopt a resolution in accordance with the provisions of 20-9-422 requesting the board of county commissioners to submit such bond proposition to the qualified electors of the county; or

(b) a petition signed by not less than 20% of the electors of the county who are qualified under 20-20-301 may be presented to the trustees of the county high school. Such petition shall request the submission of a bond proposition to the qualified electors of the county and shall specify the purpose or purposes of the proposed bond issue and the amount of bonds to be issued. Such petition shall conform with the petition requirements prescribed in 20-9-423. If the trustees of the county high school approve a validated petition for a bond proposition, they shall request the board of county commissioners of the county to submit such bond proposition to the qualified electors of the county.

History: En. 75-7134 by Sec. 335, Ch. 5, L. 1971; amd. Sec. 12, Ch. 83, L. 1971; R.C.M. 1947, 75-7134; amd. Sec. 1, Ch. 42, L. 1985.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

School property, Title 20, ch. 6, part 6.

20-9-453. Duty of board of county commissioners to call election and issue bonds. Immediately upon the receipt of any bond proposition request from the trustees of the county high school, it shall be the duty of the board of county commissioners to submit such question to the qualified electors of the county in the manner otherwise provided by law for the submission of the proposition of the issuance of other county bonds. If a majority of the qualified electors of the county voting upon the proposition so submitted shall approve such issue, then the board of county commissioners shall issue and market the bonds authorized as in the case of other county bonds.

History: En. 75-7135 by Sec. 336, Ch. 5, L. 1971; R.C.M. 1947, 75-7135.

Cross-References

Bond issues, Title 17, ch. 5.

Preparation and form of ballots for bond election, 20-9-426.

Notice of bond election by separate purpose, 20-9-427.

20-9-454. Proration of county bond proceeds between high schools of the county. In any county where a county high school is located and such county high school is not located in a county that has been divided into high school districts and another high school is maintained by an elementary district of the county, bonds of the county may likewise be issued in accordance with the provisions of 20-9-452 and 20-9-453. The proceeds of such issue shall be divided among the county high school and the districts maintaining a high school. The question submitted to the electors of the county shall state the amount which is to be allotted to the county high school and the amount which is to be apportioned to or among such districts. In all such cases, the amount allotted to the county high school and the amount to be apportioned among the districts shall be computed upon the basis of the taxable valuation of the county that is used for county high school property taxation purposes and the taxable valuation of the districts maintaining a high school. Any such bond moneys apportioned to a district shall not be expended until the purpose for the expenditure has been approved by a vote of the qualified electors at an election held in the same manner prescribed for a school district bond election.

History: En. 75-7136 by Sec. 337, Ch. 5, L. 1971; R.C.M. 1947, 75-7136.

20-9-455. Payment of county bonds. All bonds authorized and issued for a county high school not located in a high school district shall be paid, both principal and interest, in the manner provided by law for the payment of other bonds of the county.

History: En. 75-7137 by Sec. 338, Ch. 5, L. 1971; R.C.M. 1947, 75-7137.

Cross-References

Investment of proceeds arising from sale of county high school construction bonds, 7-6-2802.

20-9-456. Budget prohibition when county bonds issued. In all cases where bonds of the county are issued for county high school purposes, the trustees of the county high school shall not budget for any item of expense or disbursement for the purposes for which such county bonds have been issued.

History: En. 75-7138 by Sec. 339, Ch. 5, L. 1971; R.C.M. 1947, 75-7138.

20-9-457 through 20-9-460 reserved.

20-9-461. Purpose. Sections 20-9-461 through 20-9-464 are intended to improve the marketability of bonds issued by school districts in order that said bonds may be sold upon the most favorable terms.

History: En. Sec. 4, Ch. 139, L. 1939; R.C.M. 1947, 82-413(part).

20-9-462. Bond issue proceedings to be submitted to attorney general. The governing body of any school district shall submit a certified copy of all proceedings preliminary to such bond issue to the attorney general, together with such other proceedings, certificates, and records as he may require, and request his report as to examination and validity.

History: En. Sec. 1, Ch. 139, L. 1939; R.C.M. 1947, 82-410(part).

20-9-463. Attorney general to report as to validity of bonds. It is hereby made the duty of the attorney general to examine certified copies of all proceedings preliminary to the issuance of bonds by any school district which may be submitted to him for such examination, and if found regular and valid, he shall deliver to the recording officer of such district a report of his examination and determination as to the validity of such bonds. A certified copy of such report shall be filed with the officer required by law to register said bonds, and a notation thereof shall be entered in the bond register.

History: En. Sec. 2, Ch. 139, L. 1939; R.C.M. 1947, 82-411(part).

Cross-References

Bond Validating Act, Title 17, ch. 5, part 2.

20-9-464. Statute of limitations — action to test validity. No bond of any issue, whereof the preliminary proceedings have been submitted to and approved by the attorney general, shall be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance, or sale of said bonds, unless an action to contest the validity thereof shall be brought within 30 days after the date of sale.

History: En. Sec. 3, Ch. 139, L. 1939; R.C.M. 1947, 82-412(part).

Cross-References

Bond Validating Act, Title 17, ch. 5, part 2.

20-9-465. Action to restrain bond issue — time for bringing. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any school district or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the resolution authorizing the issuance thereof on account of any defect, irregularity, or informality in giving notice of or in holding the election; nor may any defense based upon any such defect, irregularity, or informality be interposed in any action unless brought within this period.

(2) This section applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

History: En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; amd. Sec. 15, Ch. 158, L. 1971; R.C.M. 1947, 93-2612(part); amd. Sec. 12, Ch. 384, L. 1979.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Property tax levies, Title 15, ch. 10.

Bond Validating Act, Title 17, ch. 5, part 2.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

20-9-466. School district bonds — state loan — qualifications for state loan. (1) The department of administration shall make a loan from the coal severance tax school bond contingency loan fund, established in 17-5-703(1)(e), to a school district in an amount equal to the principal and interest payment on qualifying bonds when due in accordance with the provisions contained in the bonds. In order to receive a loan, the school district must:

(a) have issued bonds between January 21, 1992, and January 1, 1993, pursuant to 20-9-421 and 20-9-464;

(b) be prevented from making principal and interest payments on the bonds because the debt service levy for the bonds:

(i) has been declared invalid or unenforceable under Article II, section 4, or Article X, section 1, of the Montana constitution by a final court order; or

(ii) is prevented by an injunction;

(c) have exhausted the debt service reserve for the bonds; and

(d) have complied with all the requirements for the bonds contained in 20-9-467 and this section.

(2) To qualify for the state loan described in subsection (1), a school district, before issuing its bonds, must have:

(a) received voter approval for bonds pursuant to 20-9-421;

(b) following voter approval, received a certificate of eligibility from the board of public education stating that after consultation with the superintendent of public instruction, the board has determined that a minimum of 75% of the principal amount of the proposed bonds will be used to:

(i) restore, rebuild, or replace a destroyed or severely damaged school building;

(ii) correct one or more building deficiencies that affect the health and safety of school children;

(iii) correct one or more deficiencies that prevent the school district from meeting current accreditation standards; or

(iv) address any combination of circumstances described under subsections (2)(b)(i) through (2)(b)(iii); and

(c) received a final certificate of allocation from the department of administration pursuant to subsection (5).

(3) The board of public education shall:

(a) maintain a record of the total principal amount of bonds for which certification has been issued; and

(b) immediately furnish to the department a copy of each certificate issued.

(4) Upon receipt of a copy of the certificate from the board of public education, the department shall temporarily allocate loan authority to the school district equal to the principal amount of bonds indicated in the board's certificate. The principal amount of bonds for which final certification is issued may be less than the principal amount of bonds approved by the voters pursuant to subsection (2)(a).

(5) To obtain a final certificate of allocation, a school district shall provide the department, on a form provided by the department, the following information:

(a) the tentative date of sale of the school district's bonds;

(b) the principal amount of the bonds to be issued;

(c) the name and addresses of bond counsel and the financial advisor; and

(d) other information as requested by the department.

(6) Upon issuance of the bonds, a school district shall forward to the department a copy of the district's bond resolution, the final opinion of bond counsel on the bonds, and a schedule of principal and interest payments on the bonds to maturity. The bond resolution must include a covenant agreeing to:

(a) defend any lawsuit challenging the school district's authority to sell and issue the bonds and to levy a tax for payment of the principal of and interest on the bonds;

(b) provide to the department before August 1 of each year a report of the school district's outstanding principal balance as of the preceding June 30 on the bonds secured by state loans;

(c) refund the bonds on any normal call date if, during the term of the bonds, the school district can refund its bonds without the state loan security and without increasing its total debt service costs on the bonds; and

(d) enter into a contract with the department establishing a schedule to repay the state if the state loans the school district money to make payments on district bonds. Notwithstanding other provisions of law, the loan must be repaid by the school district at a rate equivalent to the average yield of the pooled investment fund established in 17-6-203(3), commonly known as the short-term investment pool, for the period of the loan. Repayment must begin no later than January 1, 1994, and the loan must be repaid in full within 10 years from the date the first loan is issued to a school district. Repayment must be paid from the sources designated for repayment of the bonds or from any other revenue and assets of the school district, including state equalization funds currently distributed or which may be distributed to the district. Loan repayments received by the department must be deposited in the coal severance tax school bond contingency loan fund.

(7) The department shall maintain a record of the total principal amount of bonds secured by state loans.

(8) A school district issuing bonds subject to 20-9-467 and this section may apply to the attorney general for a determination as to whether its bonds are affected by a court order declaring that the bonds of another district are invalid or unenforceable.

(9) A school district whose authority to levy a property tax to pay principal of and interest on bonds has been challenged shall, upon notification of the challenge, immediately notify the attorney general and the department.

History: En. Sec. 1, Ch. 12, Sp. L. January 1992.

20-9-467. State loan — limitation on state loan authority — priority of loan allocation — application. (1) The allocation of the state's loan authority for bonds issued pursuant to 20-9-466 is intended only to enable a school district to issue bonds pending resolution of the financing of capital outlay.

(2) Except as provided in subsection (5), the total principal amount of school district bonds that may be secured by loans under 20-9-466 may not exceed $25 million and must be allocated to qualifying school districts on a first-come, first-serve basis in order of issuance of final certificates of allocation by the department of administration.

(3) An individual school district may not issue bonds secured by a state loan with a principal amount in excess of $6 million.

(4) If more than one school district qualifies for a state loan and an insufficient amount of state loan authority remains, the board of public education shall allocate the state loan authority to the district with the earliest voter approval of its bonds.

(5) Prior to allocating the final $1.5 million of state loan authority under 20-9-466, the board of public education shall determine if there is a school district eligible for a state loan under 20-9-466(2)(b)(i) and, if so, shall give that district first priority to the remaining loan authority.

(6) This section does not apply unless a bond resolution contains the covenant required under 20-9-466(6).

History: En. Sec. 2, Ch. 12, Sp. L. January 1992.

20-9-468 through 20-9-470 reserved.

20-9-471. Issuance of obligations — authorization — conditions. (1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, and electrical systems;

(c) any other expenditure the district is otherwise authorized to make, subject to subsection (4), including the payment of settlements of legal claims and judgments; and

(d) the costs associated with the issuance and sale of the obligations.

(2) The term of the obligation may not exceed 5 full fiscal years.

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(4) The proceeds of the obligation may not be used to acquire real property or construct a facility.

(5) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(6) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium and upon any other terms and conditions that the trustees determine to be in the best interests of the district.

(7) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406.

History: En. Sec. 1, Ch. 264, L. 1989; amd. Sec. 1, Ch. 719, L. 1991; amd. Sec. 38, Ch. 767, L. 1991.

Part 5

Special Purpose Funds

Part Cross-References

Management of school money, Title 7, ch. 6, part 28.

Bus depreciation reserve fund, 20-10-147.

School food services fund, 20-10-204, 20-10-207.

20-9-501. Retirement fund. (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(ii) net proceeds taxes and local government severance taxes on any other oil and gas production occurring after December 31, 1988;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget; and

(v) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

History: En. 75-7204 by Sec. 343, Ch. 5, L. 1971; amd. Sec. 1, Ch. 281, L. 1973; amd. Sec. 1, Ch. 202, L. 1975; amd. Sec. 1, Ch. 121, L. 1977; R.C.M. 1947, 75-7204; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 3, Ch. 481, L. 1979; amd. Sec. 5, Ch. 699, L. 1983; amd. Sec. 16, Ch. 695, L. 1985; amd. Sec. 19, Ch. 611, L. 1987; amd. Sec. 4, Ch. 635, L. 1987; amd. Sec. 23, Ch. 655, L. 1987; amd. Secs. 43, 89, Ch. 11, Sp. L. June 1989; amd. Sec. 39, Ch. 767, L. 1991; amd. Sec. 9, Ch. 133, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 133 in (4)(b) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Cross-References

Participation of teachers in social security system, Title 19, ch. 1, part 8.

School fiscal year, 20-1-301.

Special funding provisions for special education cooperatives, 20-7-451.

Administration of finances, Title 20, ch. 9, part 2.

20-9-502. Purpose and authorization of a building reserve fund by an election. (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings or for the purpose of purchasing land needed for school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(a) the purpose or purposes for which the new or addition to the building reserve will be used;

(b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and

(d) any other requirements under 20-20-201 for the calling of an election.

(2) The total amount of building reserve when added to the outstanding indebtedness of the district may not be more than the limitations provided in 20-9-406. A building reserve tax authorization may not be for more than 20 years.

(3) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BUILDING RESERVE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BUILDING RESERVE—YES" if you wish to vote for the establishment of a building reserve (addition to the building reserve); if you are opposed to the establishment of a building reserve (addition to the building reserve) make an X or similar mark in the square before the words "BUILDING RESERVE—NO".

Shall the trustees be authorized to impose an additional levy each year for .... years to establish a building reserve (add to the building reserve) of this school district to raise a total amount of .... dollars ($....), for the purpose(s) .... (here state the purpose or purposes for which the building reserve will be used)?

☐ BUILDING RESERVE—YES.

☐ BUILDING RESERVE—NO.

(4) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for such purpose or purposes before any money realized by the bond issue is used.

History: En. 75-7205 by Sec. 344, Ch. 5, L. 1971; amd. Sec. 13, Ch. 83, L. 1971; amd. Sec. 1, Ch. 29, L. 1975; R.C.M. 1947, 75-7205; amd. Sec. 62, Ch. 614, L. 1981; amd. Sec. 8, Ch. 555, L. 1991.

Cross-References

Mail ballot elections prohibited, 13-19-104.

School property, Title 20, ch. 6, part 6.

20-9-503. Budgeting, tax levy, and use of the building reserve fund. (1) Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include such authorized amount in the building reserve fund of the preliminary budget. The county superintendent shall report such amount as the building reserve fund levy requirement to the county commissioners on the fourth Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund shall have the authority to expend moneys from such fund for the purpose or purposes for which it was authorized without such specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to commence the authorized projects. Such expenditures shall not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest such money in accordance with 20-9-213(4). The interest earned from the investment shall be credited to the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for such fund.

History: En. 75-7206 by Sec. 345, Ch. 5, L. 1971; R.C.M. 1947, 75-7206; amd. Sec. 10, Ch. 133, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 133 in (1), in second sentence, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

20-9-504. Extracurricular fund for pupil functions. (1) The government of the pupils of the school within a district or the administration of a school on behalf of the pupils may establish an extracurricular fund for the purposes of the receipts and expenditures of money collected for pupil extracurricular functions with the approval of the trustees of the district. All extracurricular money of a pupil organization of the school must be deposited and expended by check from a bank account maintained for the extracurricular fund.

(2) An accounting system for the extracurricular fund recommended by the superintendent of public instruction must be implemented by the trustees. The accounting system must provide for:

(a) the internal control of the cash receipts and expenditures of the money; and

(b) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function.

History: En. 75-6323 by Sec. 136, Ch. 5, L. 1971; amd. Sec. 1, Ch. 349, L. 1971; amd. Sec. 1, Ch. 218, L. 1973; amd. Sec. 17, Ch. 380, L. 1975; R.C.M. 1947, 75-6323; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 40, Ch. 767, L. 1991.

20-9-505. Purpose and establishment of nonoperating fund. (1) The trustees of a district that will not operate a school during the ensuing school fiscal year shall establish a nonoperating fund on the first day of the school fiscal year. In establishing the nonoperating fund, the trustees shall cause the transfer of the end-of-the-year fund balance of each fund maintained by the district during the immediately preceding school fiscal year to the nonoperating fund. However, fund balances of the debt service fund and the miscellaneous programs fund, if any, must be maintained in their individual funds.

(2) The trustees of a district establishing a nonoperating fund for the first year of nonoperation may earmark a portion of the nonoperating fund balance as a nonoperating fund operating reserve when they anticipate the reopening of a school in the following school fiscal year. The operating reserve may not be more than the general fund operating reserve designated for the immediately preceding school fiscal year. If a school is not operated in the following school fiscal year, the authority of the trustees to earmark a nonoperating fund operating reserve terminates and the money earmarked as an operating reserve must be used to reduce the levy requirement of the nonoperating fund. If the trustees acquire approval to reopen a school in the following school fiscal year under the provisions of 20-6-502 or 20-6-503 and operate the school, the nonoperating fund operating reserve must be restored as the general fund operating reserve.

(3) The purpose of the nonoperating fund is to centralize the financing and budgeting for the limited functions of a district not operating a school. The functions include:

(a) elementary tuition obligations to other districts;

(b) transportation of the resident pupils;

(c) maintenance of district-owned property; and

(d) any other nonoperating school function of the district considered necessary by the trustees or required by law.

(4) Any expenditure of nonoperating fund money must be made in accordance with the financial administration provisions of this title for a budgeted fund.

History: En. 75-7209 by Sec. 348, Ch. 5, L. 1971; R.C.M. 1947, 75-7209; amd. Sec. 41, Ch. 767, L. 1991.

Cross-References

School fiscal year, 20-1-301.

Elementary district abandonment, 20-6-209.

Joint elementary district abandonment, 20-6-210.

High school district abandonment, 20-6-307.

20-9-506. Budgeting and net levy requirement for nonoperating fund. (1) The trustees of any district which does not operate a school or will not operate a school during the ensuing school fiscal year shall adopt a nonoperating school district budget in accordance with the school budgeting provisions of this title. Such nonoperating budget shall contain the nonoperating fund and, when appropriate, a debt service fund. The nonoperating budget form shall be promulgated and distributed by the superintendent of public instruction under the provisions of 20-9-103.

(2) After the adoption of a final budget for the nonoperating fund, the county superintendent shall compute the net levy requirement for such fund by subtracting from the amount authorized by such budget the sum of:

(a) the end-of-the-year cash balance of the nonoperating fund or, if it is the first year of nonoperation, the cash balance determined under the transfer provisions of 20-9-505;

(b) the estimated state and county transportation reimbursements; and

(c) any other moneys that may become available during the ensuing school fiscal year.

(3) The county superintendent shall report the net nonoperating fund levy requirement and any net debt service fund levy requirement determined under the provisions of 20-9-439 to the county commissioners on the fourth Monday of August, and such levies shall be made on the district by the county commissioners in accordance with 20-9-142.

History: En. 75-7210 by Sec. 349, Ch. 5, L. 1971; R.C.M. 1947, 75-7210; amd. Sec. 11, Ch. 133, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 133 in (3) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Cross-References

Property tax levies, Title 15, ch. 10.

State transportation reimbursement, 20-10-145.

County transportation reimbursement, 20-10-146.

20-9-507. Miscellaneous programs fund. (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-324 other than money under the provisions of Title I of Public Law 81-874 or federal money designated for deposit in a specific fund of the district shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district or may be a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall cause a separate accounting to be maintained for each federal grant program and for the aggregate of all reimbursement money.

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

History: En. 75-7212 by Sec. 351, Ch. 5, L. 1971; R.C.M. 1947, 75-7212; amd. Sec. 5, Ch. 310, L. 1979; amd. Sec. 42, Ch. 767, L. 1991; amd. Sec. 8, Ch. 466, L. 1993; amd. Sec. 15, Ch. 563, L. 1993; amd. Sec. 37, Ch. 633, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 466 near beginning of (1) substituted "20-9-321(8)" for "20-9-321(3)". The Code Commissioner has not made this revision because the reference was merely a reflection of the amendment to 20-9-321 made by Ch. 466, and the reference was deleted by Ch. 633. Amendment effective July 1, 1994.

Chapter 563 near beginning of (1) substituted "20-5-324" for "20-5-307(4), 20-5-312(8)".

Chapter 633 near beginning of (1), after "20-5-312(8)", deleted "and 20-9-321(3)". Amendment effective July 1, 1993.

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Cross-References

Administration of finances, Title 20, ch. 9, part 2.

20-9-508. Building fund. (1) The trustees of any district shall establish or credit the building fund whenever such district:

(a) issues and sells bonds under the school district bonding provisions of this title for purposes other than refunding bonds of the district;

(b) receives federal money for the express purpose of building, enlarging, or remodeling a school building or other building of the district;

(c) sells property of the district in accordance with the law authorizing such sale;

(d) receives money as an insurance settlement for the destruction of any property or portion of property insured by the district;

(e) earns interest from the investment of building fund moneys under the provisions of 20-9-213(4), except interest earned from the investment of bond moneys under the provisions of 20-9-435 shall be credited to a fund in accordance with such section; or

(f) receives any other moneys for the express purpose of building, enlarging, or remodeling a school building or other building of the district.

(2) The financial administration of the building fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund and shall provide for a separate accounting of the moneys realized by each bond issue or by each construction project financed by a federal grant of moneys. Any other moneys to the credit of this fund shall be expended for building, enlargement, remodeling, or repairing of buildings of the district at the discretion of the trustees.

(3) Moneys credited to the building fund under the provisions of subsection (1)(a) of this section shall be expended for the express purpose or purposes authorized by the bond proposition approved at the election authorizing the issuance of such bonds. Any money realized by the sale of bonds and remaining to the credit of the building fund after the full accomplishment of the purpose for which the bonds were sold shall be transferred to the debt service fund to be used for the redemption of bonds of such issue.

(4) Moneys credited to the building fund under the provisions of subsection (1)(b) of this section shall be expended for the express purpose or purposes authorized by the federal government in granting such moneys.

History: En. 75-7213 by Sec. 352, Ch. 5, L. 1971; R.C.M. 1947, 75-7213.

Cross-References

Trustees' authority to acquire or dispose of sites and buildings, 20-6-603.

Sale of property when resolution passed after hearing, 20-6-604.

Administration of finances, Title 20, ch. 9, part 2.

Lease or sale of district property, 20-15-107.

20-9-509. Lease or rental agreement fund. (1) The trustees of any district that provides pupil or teacher housing in district-owned buildings under a lease or rental agreement with pupils or teachers or receives moneys under the provision of 20-6-607 may establish a lease or rental agreement fund. All moneys received from such lease or rental agreements may be deposited with the county treasurer to the credit of the lease or rental agreement fund, general fund, the debt service fund, or any other appropriate fund. Whenever the end-of-the-year cash balance of a lease or rental agreement fund is more than $10,000, such cash balance in excess of $10,000 shall be transferred to the general fund of the district.

(2) Any expenditure of moneys from a lease or rental agreement fund shall be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the lease or rental agreement fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

History: En. 75-7214 by Sec. 353, Ch. 5, L. 1971; amd. Sec. 1, Ch. 88, L. 1973; amd. Sec. 4, Ch. 424, L. 1977; R.C.M. 1947, 75-7214; amd. Sec. 1, Ch. 58, L. 1983; amd. Sec. 1, Ch. 135, L. 1987.

Cross-References

Leasing district property and disposition of any rentals, 20-6-607.

20-9-510. Traffic education fund. The trustees of any district offering a state reimbursed traffic education program shall establish a traffic education fund under the provisions of 20-7-507. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: En. 75-7215 by Sec. 354, Ch. 5, L. 1971; R.C.M. 1947, 75-7215.

20-9-511. Interlocal cooperative agreement fund. The trustees of any district serving as a prime agency under an interlocal cooperative agreement shall establish an interlocal cooperative fund under the provisions of 20-9-703 for the financial administration of the interlocal cooperative agreement. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: En. 75-7216 by Sec. 355, Ch. 5, L. 1971; R.C.M. 1947, 75-7216.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

20-9-512. *(Temporary)* **Compensated absence liability fund.** (1) The trustees of a school district may establish a compensated absence liability fund for the purpose of paying:

(a) any accumulated amount of sick leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district in accordance with the provisions of 2-18-618; and

(b) any accumulated amount of vacation leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district.

(2) The compensated absence liability fund may be used only for the stated purpose of this section.

(3) At the end of each school fiscal year, the trustees may appropriate a portion of the general fund end-of-the-year fund balance to establish and maintain the compensated absence liability fund.

(4) The maximum amount in a reserve fund established under the provisions of subsections (1) and (3) may not exceed 30% of:

(a) the total school district liability for accumulated sick leave of nonteaching and administrative school district employees on June 30 of the preceding school fiscal year; and

(b) the total school district liability for accumulated vacation leave of nonteaching and administrative school district employees on June 30 of the preceding school fiscal year.

(5) For the purposes of this section, "administrative school district employee" means a school district employee who is employed in an administrative position and who accrues vacation leave as part of the employee's contract with the school district. *(Terminates July 1, 1995—sec. 3, Ch. 754, L. 1991.)*

20-9-512. *(Effective July 1, 1995)* **Reserve fund for payment of accumulated sick leave.** (1) The trustees of a school district may establish a reserve fund for the purpose of paying any accumulated amount of sick leave that a nonteaching school district employee is entitled to upon termination of employment with the district in accordance with the provisions of 2-18-618. The reserve fund may be used only for the stated purpose of this section.

(2) At the end of each school fiscal year, the trustees may appropriate a portion of the general fund end-of-the-year fund balance to establish a reserve fund.

(3) The maximum amount in a reserve fund established under the provisions of subsections (1) and (2) may not exceed 30% of the total school district liability for accumulated sick leave of nonteaching school district employees on June 30 of the preceding school fiscal year.

History: En. Sec. 1, Ch. 138, L. 1981; amd. Sec. 10, Ch. 568, L. 1991; amd. Sec. 1, Ch. 754, L. 1991.

Cross-References

School fiscal year, 20-1-301.

20-9-513. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 1, Ch. 384, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 24, Ch. 658, L. 1987.

20-9-514. Impact aid fund. (1) The trustees of a district that receives federal funds under the provisions of Title I of Public Law 81-874 shall establish an impact aid fund. Money received under the provisions of Public Law 81-874 must be deposited with the county treasurer to the credit of the impact aid fund.

(2) The expenditure of money from the impact aid fund must be made pursuant to Title I of Public Law 81-874. The impact aid fund must be administered pursuant to the financial administration provisions of this title for nonbudgeted funds.

History: En. Sec. 41, Ch. 633, L. 1993.

Compiler's Comments

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

20-9-515 through 20-9-530 reserved.

20-9-531. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.
History: En. Sec. 1, Ch. 635, L. 1987.

20-9-532. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.
History: En. Sec. 2, Ch. 635, L. 1987; amd. Sec. 10, Ch. 337, L. 1989.

Part 6

Public School Fund and Grants to Schools

20-9-601. Public school fund. The public school fund shall be maintained by the state treasurer as a fund in the nonexpendable trust fund type, and the principal amount of such fund shall be irreducible and permanent. The following moneys shall be credited to such fund as an addition to the irreducible and permanent principal amount:

(1) appropriations and donations by the state;

(2) donations and bequests by individuals to the state or schools;

(3) the proceeds of land and other property which revert to the state by escheat and forfeiture;

(4) the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain;

(5) funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law;

(6) the proceeds of the sale of stone, materials, or other property from school lands other than those granted for specific purposes and all moneys other than rental recovered from persons trespassing on such lands;

(7) the principal of all moneys arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools;

(8) the amount earmarked for deposit in this fund under the provisions of 20-9-341; and

(9) such other moneys as may be provided by the legislature.

History: En. 75-7301 by Sec. 356, Ch. 5, L. 1971; R.C.M. 1947, 75-7301; amd. Sec. 16, Ch. 281, L. 1983; amd. Sec. 4, Ch. 14, Sp. L. January 1992.

Compiler's Comments

Deletion of Termination Date: Section 9, Ch. 533, L. 1993, amended sec. 6, Ch. 14, Sp. L. January 1992, by removing the termination date for this section.

Cross-References

The Enabling Act, sec. 11.

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund inviolate, Art. X, sec. 3, Mont. Const.

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Escheated estates, Title 72, ch. 14.

20-9-602. Title to farm mortgage lands vested in state and transfers validated. (1) The transfer of farm mortgage lands, made by Chapter 250, Laws of 1953, shall be deemed to have vested title in such lands in the state of Montana in trust for the state public school fund.

(2) All contracts, certificates of purchase, deeds, and conveyances executed by the state of Montana in the administration of such lands since March 11, 1953, shall be deemed sufficient in law to dispose of the right, title, and interest therein described by the state of Montana.

History: En. 75-7302 by Sec. 357, Ch. 5, L. 1971; R.C.M. 1947, 75-7302.

20-9-603. Acceptance and expenditure of federal moneys for state. (1) The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept such moneys as are now or will be made available under any act of congress of the United States or otherwise for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury and are appropriated and made available to the superintendent of public instruction. All such moneys shall be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government.

(2) The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept moneys provided from federal sources for the express purpose of distribution to nonpublic education. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury and are appropriated and made available to the superintendent of public instruction. All such moneys shall be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government.

(3) All expenditures of moneys from federal sources under this section shall be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which such moneys are maintained shall not lapse at any time but shall be continuously available to the superintendent of public instruction for expenditures consistent with this title and acts of the federal government.

History: En. 75-7303 by Sec. 358, Ch. 5, L. 1971; amd. Sec. 1, Ch. 34, L. 1973; (amd. Sec. 7, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 7, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7303.

Cross-References

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Power to accept gifts, 20-6-601.

Trustees' authority to acquire or dispose of sites and buildings — when election required, 20-6-603.

20-9-604. Gifts, legacies, devises, and administration of endowment fund. (1) The trustees of any district may accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the donor or the will of the testator or without any conditions imposed. Unless otherwise specified by the donor, devisor, or testator, when a district receives a gift, legacy, or devise, the trustees shall deposit such gift, legacy, devise, or the proceeds therefrom in an endowment fund. The trustees shall administer the endowment fund so as to preserve the principal from loss, and only the income from the fund shall be appropriated for any purpose.

(2) Unless the conditions of the endowment instrument require an immediate disbursement of the money, the money deposited in the endowment fund shall be invested by the trustees, notwithstanding the provisions of any other state law, in:

(a) school district bonds of the district;

(b) bonds of other school districts within the state;

(c) first mortgage bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent and operating public utility corporation existing under the laws of the United States of America or any state thereof, which bonds, debentures, notes, and other evidences of indebtedness are, at the time of such investment, within the three highest quality grades for the rating of such bonds, debentures, notes, and other evidences of indebtedness by any nationally recognized investment rating agency;

(d) certificates of deposit of Montana banks insured by the federal deposit insurance corporation; or

(e) direct obligations of the United States government.

(3) All interest collected on the deposits or investments shall be credited to the endowment fund. No portion of the endowment fund may be loaned to the district nor may any money of the fund be invested in warrants of the district.

(4) Whenever any district has been abandoned, the endowment fund of the abandoned district shall be transferred and placed in the endowment fund in the district to which the territory is attached.

(5) As the custodian of the endowment fund, the county treasurer is liable on his official bond for the endowment fund of any district of the county. No later than July 1 each school fiscal year, the county treasurer shall account to the trustees of each district on the condition of its endowment fund including the status of the investments that have been made with the money of the fund. The county treasurer shall also include the endowment fund in his reports to the board of county commissioners.

(6) The trustees of any district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the district which become a part of the endowment fund.

History: En. 75-7309 by Sec. 364, Ch. 5, L. 1971; amd. Sec. 1, Ch. 342, L. 1971; amd. Sec. 24, Ch. 266, L. 1977; R.C.M. 1947, 75-7309.

Cross-References

General provisions related to official bonds, Title 2, ch. 9, part 5.

Power to accept gifts, 20-6-601.

Part 7

Educational Cooperative Agreements

Part Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

Authorization to create full service special education cooperatives, 20-7-451.

20-9-701. Definitions of prime and cooperating agencies. For the purposes of an interlocal cooperative agreement, the prime agency shall be the district or other public agency vested with the financial administration of the interlocal cooperative agreement under the terms of such agreement and the cooperating agency shall be any district or public agency other than a prime agency who is a party to the contract creating the interlocal cooperative agreement.

History: En. 75-7305 by Sec. 360, Ch. 5, L. 1971; R.C.M. 1947, 75-7305.

20-9-702. Financial administration of interlocal cooperative agreement. Any district contracting with other districts or other public agencies to establish an interlocal cooperative agreement under the provisions of Title 7, chapter 11, part 1, shall be subject to the provisions of 20-9-701, 20-9-703, and 20-9-704 for the purposes of the financial administration of such agreement.

History: En. 75-7304 by Sec. 359, Ch. 5, L. 1971; R.C.M. 1947, 75-7304.

20-9-703. District as prime agency. (1) When the prime agency is a district, it is authorized and required to establish a nonbudgeted interlocal cooperative fund for the purpose of the financial administration of the interlocal cooperative agreement. All revenues received, including federal, state, or other types of grant payments in direct support of the agreement and the financial support provided by cooperating agencies, shall be deposited in such fund. All financial support of the agreement contributed by a district designated as the prime agency may be transferred to the interlocal cooperative fund from any fund maintained by such district by resolution of the trustees. Any such transfer to the interlocal cooperative fund shall be used to finance those expenditures under the agreement which are comparable to those that are permitted by law to be made out of the fund from which the transfer was made and which are within the final budget for the fund from which the transfer was made. No transfer shall be made from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

(2) All expenditures in support of the interlocal cooperative agreement shall be made from the interlocal cooperative fund established by the district which is the prime agency, except that expenditures in support of such agreement may be made from the miscellaneous federal programs fund when the express approval of the superintendent of public instruction is given.

History: En. 75-7306 by Sec. 361, Ch. 5, L. 1971; R.C.M. 1947, 75-7306.

20-9-704. District as cooperating agency. (1) When a district is the cooperating agency, it shall transfer its financial support under the interlocal cooperative contract to the prime agency by district warrant.

(2) The financial support may be provided from any fund maintained by the district. Any such fund utilized for the financial support of an interlocal cooperative agreement shall finance only those expenditures of such agreement that are comparable to those permitted under the statutory provisions creating such fund, and such financial support must be within the currently adopted budget for such fund. No financial support shall be financed from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

History: En. 75-7307 by Sec. 362, Ch. 5, L. 1971; R.C.M. 1947, 75-7307.

20-9-705. Joint interstate school agreements. (1) The trustees of any district adjacent to another state may enter into a contract with a school district in such adjoining state to provide for the joint erection, operation, and maintenance of school facilities for both districts upon such terms and conditions as may be mutually agreed to by such districts and as are in accord with this section. Any such contract proposed for adoption by the trustees shall be in the form and contain only terms that may be prescribed by the superintendent of public instruction, and any such contract shall be approved by the superintendent of public instruction before it is considered by the electors of the district.

(2) Before any contract negotiated under the provisions of this section shall be executed, the trustees shall call an election under the provisions of 20-20-201 and submit to the qualified electors of the district the proposition that such contract be approved and that the trustees execute such contract. No agreement shall be valid until it has been approved at an election. The electors at the election shall be qualified to vote under the provisions of 20-20-301, and the election shall be conducted under the school election provisions of this title. The ballot for the election shall be substantially in the following form:

PROPOSITION

SCHOOL DISTRICT NO. ...., ... COUNTY

Shall the trustees of this district be authorized and directed to execute the proposed contract with school district number .... of .... County, state of ...., for the purpose of (insert the purpose of such contract)?

☐ FOR execution of contract.

☐ AGAINST execution of contract.

(3) The trustees of any district executing a contract under this section shall have the power and authority to levy taxes and issue bonds for the purpose of erecting and maintaining the facilities authorized by this section. Furthermore, the facilities erected or maintained under this section may be located in either Montana or the adjoining state.

History: En. 75-7308 by Sec. 363, Ch. 5, L. 1971; R.C.M. 1947, 75-7308.

Cross-References

Mail ballot elections prohibited, 13-19-104.

School elections, Title 20, ch. 20.

Part 8

Emergency School Closure

Part Cross-References

Disaster and emergency services, Title 10, ch. 3.

School terms and holidays — released time, Title 20, ch. 1, part 3.

Energy supply emergencies, Title 90, ch. 4, part 3.

20-9-801. Purpose. This part governs a school district's entitlement to state equalization apportionment funds for any school year during which the school district is unable to conduct the minimum number of school days required by law by reason of one or more unforeseen emergencies. The provisions of this part must be narrowly interpreted.

History: En. Sec. 1, Ch. 288, L. 1979.

20-9-802. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Declaration of emergency" means a declaration of a state of emergency by the governor as authorized by 10-3-302.

(2) "Reasonable effort" means the rescheduling or extension of the school district's instructional calendar in an effort to attain the minimum number of school days required by law by:

(a) extending the school year 1 week beyond the last scheduled day; or

(b) the use of scheduled vacation days.

(3) "School day" means the school day defined in 20-1-302.

(4) "Unforeseen emergency" means a fire, flood, explosion, storm, earthquake, riot, insurrection, community disaster, or act of God or any combination of the foregoing that acts as a principal cause for a school district's inability to conduct one or more scheduled school days.

History: En. Sec. 2, Ch. 288, L. 1979; amd. Sec. 1, Ch. 85, L. 1981.

20-9-803. Unforeseen emergency minimum. In no case may a district be considered to have made a reasonable effort unless at least 3 school days that have been lost by reason of one or more unforeseen emergencies have in fact been made up.

History: En. Sec. 3, Ch. 288, L. 1979.

20-9-804. Determination of eligibility. If the county superintendent or, in a county with no county superintendent, the superintendent of public instruction determines that a reasonable effort has been made to make up all school days lost by reason of one or more unforeseen emergencies but fewer than the minimum number of school days required by law have been conducted, the school district will nevertheless be credited with full annual equalization apportionment according to the rate established in 20-9-805.

History: En. Sec. 4, Ch. 288, L. 1979.

Cross-References

Elementary district abandonment, 20-6-209.

20-9-805. Rate of reduction in annual apportionment entitlement. (1) For each school day short of the minimum number of school days required by law that a school district fails to conduct by reason of one or more unforeseen emergencies as defined in 20-9-802, the superintendent of public instruction shall reduce the equalization apportionment and entitlement of the district for that school year by 1/180th.

(2) Kindergarten and grade 1 through 12 programs shall be considered separately for the purpose of computing compliance with minimum school day requirements and any loss of apportionment.

History: En. Sec. 5, Ch. 288, L. 1979; amd. Sec. 7, Ch. 299, L. 1985.

20-9-806. School closure by declaration of emergency. If a school is closed by reason of a declaration of emergency by the governor, the pupil-instruction days lost during the closure need not be rescheduled to meet the minimum requirement for pupil-instruction days that a school district must conduct during the school year in order to be entitled to full annual equalization apportionment.

History: En. Sec. 2, Ch. 85, L. 1981.

Cross-References

Pupil-instruction-related days, 20-1-304.

CHAPTER 10

TRANSPORTATION AND FOOD SERVICES

Part 1 — School Buses and Transportation

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Part 1

School Buses and Transportation

Part Cross-References

Rules for determining residence, 1-1-215.

School property, Title 20, ch. 6, part 6.

Nonoperating fund to include funds for transportation of resident pupils, 20-9-505.

Meeting or passing school bus, 61-8-351.

20-10-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) An "eligible transportee" means a public school pupil who:

(a) is 5 years of age or older and has not attained his 21st birthday or who is a preschool child with disabilities between the ages of 3 and 6;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries, resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; and

(d) is considered to reside with his parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

(2) (a) A "school bus" means, except as provided in subsection (2)(b), any motor vehicle that:

(i) complies with the bus standards established by the board of public education as verified by the Montana department of justice's semiannual inspection of school buses and the superintendent of public instruction; and

(ii) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations; or

(iv) an over-the-road passenger coach used only to transport pupils to activity events.

(3) "Transportation" means:

(a) a district's conveyance of a pupil by a school bus between his legal residence or an officially designated bus stop and the school designated by the trustees for his attendance; or

(b) "individual transportation" whereby a district is relieved of actually conveying a pupil. Individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

History: (1), (2)En. Sec. 278, Ch. 5, L. 1971; amd. Sec. 1, Ch. 61, L. 1974; amd. Sec. 3, Ch. 371, L. 1975; Sec. 75-7001, R.C.M. 1947; (3)En. Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973; Sec. 75-7002, R.C.M. 1947; R.C.M. 1947, 75-7001, 75-7002(part); amd. Sec. 1, Ch. 525, L. 1983; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 43, Ch. 767, L. 1991; amd. Sec. 1, Ch. 359, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 359 near beginning of (3)(a), after "residence", inserted "or an officially designated bus stop". Amendment effective July 1, 1993.

Cross-References

Rules for determining residence, 1-1-215.

20-10-102. School bus requirements. (1) A school bus may be operated by the district or other public agency for the conveyance of pupils or may be privately operated by a carrier to provide such conveyance of pupils under contract with a district or other public agency.

(2) Every school bus shall bear on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters at least 8 inches in height.

(3) When a school bus is operated on a highway for purposes other than transporting pupils to and from school or for school functions, all markings identifying it as a school bus shall be concealed.

History: En. 75-7002 by Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973; R.C.M. 1947, 75-7002(part).

Cross-References

Power of Board of Public Education to adopt design, construction, and operation standards, 20-2-121.

Lettering requirement under highway code, 61-8-351.

Lighting equipment, 61-8-351, 61-8-352, 61-9-226, 61-9-402.

When studded tires permitted, 61-9-406.

Safety glazing material required, 61-9-408.

Semiannual inspection of school buses, 61-9-502.

Tires for school buses generally, 61-9-406.

20-10-103. School bus driver qualifications. Any driver of a school bus is qualified to drive a school bus if the driver:

(1) is not less than 18 years of age;

(2) is of good moral character;

(3) is the holder of a commercial driver's license;

(4) has filed with the district a satisfactory medical examination report, on a form approved by the United States department of transportation or by the superintendent of public instruction, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;

(5) has completed a basic first aid course and holds a valid basic first aid certificate from an authorized instructor. The issuance of the certificate is governed by rules established by the superintendent of public instruction, provided that the rules may suspend this requirement for a reasonable period of time if there has been an inadequate opportunity for securing the basic first aid course and certificate.

(6) has complied with any other qualifications established by the board of public education; and

(7) has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven, certifying compliance with the driver qualifications enumerated in this section.

History: En. 75-7003 by Sec. 280, Ch. 5, L. 1971; amd. Sec. 1, Ch. 50, L. 1977; amd. Sec. 1, Ch. 151, L. 1977; R.C.M. 1947, 75-7003; amd. Sec. 37, Ch. 443, L. 1987; amd. Sec. 1, Ch. 311, L. 1989; amd. Sec. 3, Ch. 195, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 195 in (3) substituted "commercial driver's license" for "driver's license with a commercial vehicle operator's endorsement"; and made minor changes in style.

Cross-References

Power of trustees to employ and dismiss bus drivers, 20-3-324.

Chauffeur's license — special restrictions, 61-5-112.

20-10-104. Penalty for violating law or rules. (1) Every district, its trustees and employees, and every person under a transportation contract with a district shall be subject to the policies prescribed by the board of public education and the rules prescribed by the superintendent of public instruction. When a district knowingly violates a transportation law or board of public education transportation policy, such district shall forfeit any reimbursement otherwise payable under 20-10-145 and 20-10-146 for bus miles actually traveled during that fiscal year in violation of such law or policies. The county superintendent shall suspend all such reimbursements payable to the district until the district corrects the violation. When the district corrects the violation, the county superintendent shall resume paying reimbursements to the district, but the amount forfeited may not be paid to the district.

(2) When a person operating a bus under contract with a district knowingly fails to comply with the transportation law or the board of public education transportation policies, the district may not pay him for any bus miles traveled during the contract year in violation of such law or policies. Upon discovering such a violation, the trustees of the district shall give written notice to the person that unless the violation is corrected within 10 days of the giving of notice, the contract will be canceled. The trustees of a district shall order the operation of a bus operated under contract suspended when the bus is being operated in violation of transportation law or policies and the trustees find that such violation jeopardizes the safety of pupils.

History: En. 75-7006 by Sec. 283, Ch. 5, L. 1971; amd. Sec. 1, Ch. 78, L. 1974; R.C.M. 1947, 75-7006.

Cross-References

Penalty for violation of school laws, 20-1-207.

"Knowingly" defined, 45-2-101.

20-10-105. Determination of residence. When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the residence must be established on the basis of the general state residence law as provided in 1-1-215. Whenever a county is determined to be responsible for paying tuition for any pupil in accordance with 20-5-321 through 20-5-323, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes.

History: En. 75-7016 by Sec. 293, Ch. 5, L. 1971; amd. Sec. 20, Ch. 266, L. 1977; R.C.M. 1947, 75-7016; amd. Sec. 16, Ch. 563, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 563 near beginning of second sentence, before "county", deleted "district or" and after "accordance with" substituted "20-5-321 through 20-5-323" for "20-5-301, 20-5-302, or 20-5-311"; and made minor changes in style.

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

20-10-106. Determination of mileage distances. When the mileage distance that transportation services are to be provided is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the mileage shall be established on the following basis:

(1) The distance in mileage shall be measured by a vehicle equipped with an accurate odometer.

(2) A representative of the applicable district and a parent or guardian of the child to be transported shall be present when the distance is measured.

(3) The measurement shall begin 6 yards from the family home and end 6 yards from the entrance of the school grounds closest to the route.

(4) The route traversed for the measurement shall be the route designated by the trustees, except that the route shall be reasonably passable during the entire school fiscal year by the vehicle that provides the child's transportation. In determining reasonable passage, a route may not be disqualified because it is impassable during temporary, extreme weather conditions such as rains, snow, or floods.

History: En. 75-7017 by Sec. 294, Ch. 5, L. 1971; amd. Sec. 21, Ch. 266, L. 1977; R.C.M. 1947, 75-7017.

20-10-107. Power of trustees. The trustees of any district shall have the power to:

(1) purchase or rent a school bus;

(2) purchase or rent a two-way radio for a school bus when the trustees authorize a two-way radio as standard equipment in a school bus because such bus is operated where weather and road conditions may constitute a hazard to the safety of the school pupil passengers;

(3) provide for the operation, maintenance, and insurance of a school bus or a two-way radio owned or rented by the district; or

(4) contract with a private party for the transportation of eligible transportees, and such contract shall not exceed the term of 5 years.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-108. Two-way radio operation. When the trustees authorize a two-way radio as standard equipment on a school bus, the two-way radio may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county when their permission and the permission of the federal communications commission is secured. If permission is not secured from these agencies, the frequency assigned by the federal communications commission shall be used for the operation of the two-way radio.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-109. Liability insurance for school bus. Whenever a bus is owned and operated by a district or the bus is operated by a private party under a contract but no condition of such contract requires the private party to carry liability insurance, the trustees shall carry automobile bodily injury and liability insurance in an amount not less than $10,000 per person and $100,000 for each accident for each bus operated by or under contract with the district.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-110. School bus purchase — contract — bids. When a district purchases a school bus, the trustees may purchase such school bus under an installment contract which will be completely executed within 3 years from the date of the purchase. The trustees also may purchase a school bus without advertising for bids under the provisions of 20-9-204.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-111. Duties of board of public education. (1) The board of public education, with the advice of the Montana department of justice and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the design, construction, and operation of school buses in the state of Montana. Such policies shall:

(a) prescribe minimum standards for the design and construction of school buses not inconsistent with:

(i) minimum standards adopted by the national commission on safety education; or

(ii) minimum standards adopted by the national highway safety bureau;

(b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:

(i) current specifications approved by the society of automobile engineers;

(ii) motor vehicle laws; and

(iii) the requirement that all school buses have an alternately flashing prewarning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with 61-9-402;

(c) establish any other driver qualifications considered necessary in addition to the qualifications required in 20-10-103;

(d) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee which shall allow for the establishment of such areas without regard to the district boundary lines within the county;

(e) prescribe any other criteria for the determination of the residence of a pupil that may be deemed necessary in addition to the criteria established in 20-10-105;

(f) prescribe any other policies for the operation of school buses which are not inconsistent with:

(i) motor vehicle laws;

(ii) minimum standards adopted for school bus operation by the national commission on safety education;

(iii) highway safety standards; and

(iv) the transportation provisions of this title;

(g) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the rated capacity.

(2) The board of public education shall prescribe any other policy necessary for the proper administration and operation of individual transportation programs that are not inconsistent with the transportation provisions of this title.

History: En. 75-7004 by Sec. 281, Ch. 5, L. 1971; amd. Sec. 1, Ch. 416, L. 1973; R.C.M. 1947, 75-7004; amd. Sec. 1, Ch. 455, L. 1981; amd. Sec. 1, Ch. 280, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Lighting equipment, 61-8-351, 61-8-352, 61-9-226, 61-9-402.

20-10-112. Duties of the superintendent of public instruction. In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

(1) prescribe rules and forms for the implementation and administration of the transportation policies adopted by the board of public education;

(2) prescribe rules for the approval of school bus routing by the county transportation committee;

(3) prescribe the format of the contract for individual transportation and supply each county superintendent with a sufficient number of such contracts;

(4) prescribe rules for the approval of individual transportation contracts, including the increases of the schedule rates due to isolation under the policy of the board of public education, and provide a degree-of-isolation chart to school district trustees to serve as a guide;

(5) approve, disapprove, or adjust all school bus routing submitted by the county superintendent;

(6) approve, disapprove, or adjust all individual transportation contracts submitted by the county superintendent;

(7) prescribe rules for the consideration of controversies appealed to him and rule on such controversies; and

(8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of public education.

History: En. 75-7005 by Sec. 282, Ch. 5, L. 1971; amd. Sec. 2, Ch. 416, L. 1973; R.C.M. 1947, 75-7005.

20-10-113 through 20-10-120 reserved.

20-10-121. Duty of trustees to provide transportation — types of transportation — bus riding time limitation. (1) The trustees of any district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees must provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and such direction is upheld by the superintendent of public instruction.

(2) The tendering of a contract to the parent or guardian whereby the district would pay the parent or guardian for individually transporting the pupil or pupils shall fulfill the district's obligation to furnish transportation for an eligible transportee. The parent or guardian of an eligible transportee may, at his discretion, provide transportation or arrange for transportation for his child at his own expense to any district willing to accept his child.

(3) The type of transportation provided by a district may be:

(a) by a school bus; or

(b) by such individual transportation as:

(i) paying the parent or guardian for individually transporting the pupil;

(ii) paying board and room reimbursements;

(iii) providing supervised correspondence study; or

(iv) providing supervised home study.

(4) When the parent or guardian of an elementary pupil consents to a trip of over 1 hour, the trustees may require such eligible transportee to ride a school bus for more than 1 hour per trip.

History: En. 75-7008 by Sec. 285, Ch. 5, L. 1971; amd. Sec. 1, Ch. 245, L. 1973; R.C.M. 1947, 75-7008.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Supervised correspondence study, 20-7-116.

Special education child eligibility for transportation, 20-7-441.

20-10-122. Discretionary provision of transportation and payment for this transportation. (1) The trustees of any district also may provide school bus transportation to any pupil of a public school who is not an eligible transportee of the district:

(a) on a school bus conveying eligible transportees when the ineligible transportee will not displace an eligible transportee from such school bus because of the lack of seating capacity;

(b) on a school bus operated by the district for the sole purpose of providing transportation for ineligible transportees. Such school bus shall service those children living the greatest distance from the school to be attended.

(c) on a school bus operated for the purpose of relieving congestion in a school building or to avoid the necessity of erecting a new building or for any other reasons of economy or convenience.

(2) When the trustees of a district provide school bus transportation to an ineligible transportee under the conditions of subsections (1)(a) or (1)(b) above, the district may charge each ineligible transportee his proportionate share, as determined by the trustees, of the cost of operating such school bus. Money realized from such payments shall be deposited to the credit of the transportation fund.

History: En. 75-7009 by Sec. 286, Ch. 5, L. 1971; R.C.M. 1947, 75-7009.

Cross-References

Transportation fund as budgeted fund, 20-9-201.

20-10-123. Provision of transportation for nonpublic school children. Any child attending a nonpublic school may ride a school bus when a permit to ride such school bus is secured from the operating district by the parent or guardian of such nonpublic school child and when there is seating capacity available on such school bus. When a nonpublic school child rides a school bus, the operating district may charge such child his proportionate share, as determined by the trustees, of the cost of operating such school bus. Money realized from such payments shall be deposited to the credit of the transportation fund.

History: En. 75-7010 by Sec. 287, Ch. 5, L. 1971; R.C.M. 1947, 75-7010; amd. Sec. 1, Ch. 320, L. 1987.

Cross-References

Transportation fund as budgeted fund, 20-9-201.

20-10-124. Private party contract for transportation — individual transportation contract. (1) When the trustees contract with any private party to provide transportation to eligible transportees, the private party shall comply in every respect with the regulations of the board of public education for the standards of equipment, operation and safety of the school bus, and qualifications of the driver. The trustees may, in contracting with private parties, require added safeguards by supplementing the board of public education policies in the contract with additional requirements for bus specifications, age of drivers, liability insurance, operating speed, or any other contractual condition deemed necessary by the trustees.

(2) Any school bus transportation by a private party or individual transportation that is furnished by a district shall be under contract, and no district, county, or state money shall be paid for such transportation services to any person or firm who does not hold a legal contract with the district. Transportation contracts for the ensuing year shall be completed by the fourth Monday of June, except when an eligible transportee establishes residence in the district after the fourth Monday of June and a contingency amount is included in the regular transportation budget or an emergency transportation budget is adopted.

(3) Transportation contracts between a district and a private party for the provision of school bus transportation shall be subject to the following requirements:

(a) the contract shall be completed in quadruplicate and, upon completion, one copy shall be for the county superintendent, one copy for the private party, one copy for the superintendent of public instruction, and one copy shall be retained by the district;

(b) the contract terms shall require conformance to the transportation law, policies of the board of public education, and rules of the superintendent of public instruction; and

(c) the contract shall be signed by the chairman of the trustees and the private party.

(4) A transportation contract between a parent or guardian of an eligible transportee and a district for the provision of individual transportation shall be subject to the following requirements:

(a) it shall be completed in quadruplicate and, upon approval, one copy shall be for the parent or guardian, one copy for the district, one copy for the county superintendent, and one copy for the superintendent of public instruction;

(b) it shall be completed on forms promulgated by the superintendent of public instruction;

(c) the parent or guardian shall sign an affidavit attesting to the place of residence of his child or children; and

(d) it shall be signed by the chairman of the trustees and the parent or guardian of the eligible transportees.

History: (1)En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; Sec. 75-7011, R.C.M. 1947; (2) thru (4)En. 75-7012 by Sec. 289, Ch. 5, L. 1971; Sec. 75-7012, R.C.M. 1947; R.C.M. 1947, 75-7011(part), 75-7012.

Cross-References

Conflicts of interest, letting contracts, calling for bids, 20-9-204.

Trustees to execute all contracts, 20-9-213.

20-10-125. Bid letting for contract bus — payments under transportation contract. (1) Before any contract with a private party for the provision of school bus transportation is awarded, the trustees shall:

(a) secure bids by publishing during a period of 21 days at least three calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county; the trustees shall let the contract to the lowest responsible bidder, and the trustees shall have the right to reject any and all bids; or

(b) negotiate a new contract with the current school bus contractor, provided the negotiated contract costs do not exceed by more than 12% per year the basic costs of the previous year's contract. Such a negotiated contract can be entered into only at a public meeting of the trustees at which meeting the patrons of the district may appear and be heard. Notice of the meeting must have been published in a newspaper of wide circulation within the district at least 1 week prior to the meeting.

(2) The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of 20-9-204.

(3) The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

(a) a contract for such transportation services has been completed; and

(b) such contracted services for school bus transportation by a private party have been actually furnished except that the failure to perform may be excused by the trustees for reasons not under the control of the contractor; or

(c) such contracted services for individual transportation have been actually furnished as confirmed by the actual attendance of school by the eligible transportees and recorded on the school attendance records or, in the case of a supervised correspondence course or supervised home study, as confirmed by the trustees; except that the contracted services furnished one way on any school day shall be reimbursed at one-half the daily contract amount.

History: En. 75-7013 by Sec. 290, Ch. 5, L. 1971; amd. Sec. 1, Ch. 362, L. 1973; R.C.M. 1947, 75-7013; amd. Sec. 1, Ch. 349, L. 1979; amd. Sec. 1, Ch. 97, L. 1981.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

Conflict of interest, 20-1-205.

Meetings and quorum, 20-3-322.

Supervised correspondence or home study as exception to compulsory enrollment, 20-5-102.

Supervised correspondence study, 20-7-116.

Trustees to execute all contracts, 20-9-213.

20-10-126 through 20-10-130 reserved.

20-10-131. County transportation committee membership. (1) To coordinate the orderly provision of a uniform transportation program within a county under the transportation law, board of public education transportation policies, and the transportation rules of the superintendent of public instruction, there shall be a county transportation committee created in each county of the state of Montana. The membership of the county transportation committee shall be:

(a) the county superintendent;

(b) the chairman of the board of county commissioners or a member of such board designated by the chairman;

(c) a trustee or district employee designated by the trustees of each high school district of the county;

(d) one representative from each high school district of the county who is a trustee of an elementary district encompassed within the high school district and who has been selected at a meeting of the trustees of such elementary districts; and

(e) a representative of a district of another county when the transportation services of such a district are affected by the actions of the transportation committee, but such a representative shall have a voice only in matters affecting transportation within such district or by such district.

(2) The county transportation committee shall have at least five members, and if this minimum membership cannot be realized in the manner prescribed in subsections (1)(a) through (1)(d) above, the county superintendent shall appoint a sufficient number of members to satisfy the minimum membership requirement.

(3) The county superintendent shall be the chairman of the county transportation committee, and a quorum shall consist of a majority of the membership. The county transportation committee shall meet on the call of the chairman or any three members of such committee.

History: En. 75-7014 by Sec. 291, Ch. 5, L. 1971; R.C.M. 1947, 75-7014.

20-10-132. Duties of the county transportation committee. (1) It shall be the duty of the county transportation committee to:

(a) establish the transportation service areas within the county, without regard to district boundary lines, which will define the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program;

(b) approve, disapprove, or adjust the school bus routing submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1)(a);

(c) approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation due to isolated conditions of the eligible transportee's residence; and

(d) conduct hearings to establish the facts of transportation controversies which have been appealed from the decision of the trustees and act on such appeals on the basis of the facts established at such hearing.

(2) After a fact-finding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal such decision to the superintendent of public instruction who shall render a decision on the basis of the facts established at the county transportation committee hearing.

(3) The trustees of any district which objects to a particular school bus route or transportation service area to which it has been assigned may request a transfer to another school bus route or transportation service area. The county transportation committee may transfer the territory of such district to an adjacent district's transportation service area or approved school bus route with the consent of such adjacent district. When the qualified electors of the district object to the decision of the county transportation committee

and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of such district be transferred for school bus transportation purposes to such consenting, adjacent district. When a satisfactory petition is presented to the trustees, the trustees shall call an election in accordance with 20-20-201 for the next ensuing regular school election day. Such election shall be conducted in accordance with the school election laws. If a majority of those voting at such election approve the transfer, it shall become effective on July 1 of the ensuing school fiscal year.

(4) Unless a transfer of a district from one transportation service area or approved school bus route to another such area or route is approved by the county transportation committee and the superintendent of public instruction, the state transportation reimbursement shall be limited to the reimbursement amount for school bus transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils.

History: En. 75-7015 by Sec. 292, Ch. 5, L. 1971; R.C.M. 1947, 75-7015.

Cross-References

Mail ballot elections prohibited, 13-19-104.

School fiscal year, 20-1-301.

School elections, Title 20, ch. 20.

20-10-133 through 20-10-140 reserved.

20-10-141. Schedule of maximum reimbursement by mileage rates. (1) The following mileage rates for school transportation constitute the maximum reimbursement to districts for school transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates may not limit the amount that a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on routes approved by the county transportation committee are reimbursable. Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. A district may approve additional bus or nonbus miles within its own district or approved service area but may not claim reimbursement for the mileage. Any vehicle, the operation of which is reimbursed for bus mileage under the rate provisions of this schedule, must be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled must be determined in accordance with the following schedule when the number of eligible transportees that board a school bus on an approved route is not less than one-half of its rated capacity:

(a) 85 cents per bus mile for a school bus with a rated capacity of not less than 12 but not more than 45 children; and

(b) when the rated capacity is more than 45 children, an additional 2.13 cents per bus mile for each additional child in the rated capacity in excess of 45 must be added to a base rate of 85 cents per bus mile.

(3) Reimbursement for nonbus mileage provided for in subsection (1) may not exceed 50% of the maximum reimbursement rate determined under subsection (2).

(4) When the number of eligible transportees boarding a school bus on an approved route is less than one-half of its rated capacity, the rate per bus mile traveled must be computed as follows:

(a) determine the number of eligible transportees that board the school bus on the route;

(b) multiply the number determined in subsection (4)(a) by two and round off to the nearest whole number; and

(c) use the adjusted rated capacity determined in subsection (4)(b) as the rated capacity of the bus to determine the rate per bus mile traveled from the rate schedule in subsection (2).

(5) The rated capacity is the number of riding positions of a school bus as determined under the policy adopted by the board of public education.

History: En. 75-7018 by Sec. 295, Ch. 5, L. 1971; amd. Sec. 1, Ch. 469, L. 1975; amd. Sec. 22, Ch. 266, L. 1977; amd. Sec. 1, Ch. 529, L. 1977; R.C.M. 1947, 75-7018; amd. Sec. 1, Ch. 590, L. 1979; amd. Sec. 1, Ch. 454, L. 1981; amd. Sec. 1, Ch. 515, L. 1983; amd. Sec. 1, Ch. 559, L. 1983; amd. Sec. 1, Ch. 344, L. 1985; amd. Sec. 10, Ch. 711, L. 1991.

Cross-References

School fiscal year, 20-1-301.

Emergency budget for transportation fund, 20-9-162, 20-9-165.

Transportation fund as budgeted fund, 20-9-201.

20-10-142. Schedule of maximum reimbursement for individual transportation. The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section may not be altered by any authority other than the legislature of the state of Montana. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement per day of attendance is determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product, and multiplying the difference by 21.25 cents, provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if the schools are operated by different school districts, the total amount of the reimbursement must be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian must be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop that are located within 3 miles of one another, the total reimbursement must be determined under the provisions of this subsection and must be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section is limited to one round trip per day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), a reimbursement may not be less than 25 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement per day of attendance is determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting 3 miles from the product, and multiplying the difference by 21.25 cents, provided that:

(a) if the eligible transportees attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian must be separately reimbursed for transportation to each bus.

(3) When, due to excessive distances, impassable roads, or other special circumstances of isolation the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, a parent or guardian may request an increase in the reimbursement rate. A request for increased rates due to isolation must be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances that exist to justify the increase. Before an increased rate due to isolation may be paid to the requesting parent or guardian, the rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay the increased rate due to isolation. The increased rate is 1 ½ times the rate prescribed in subsection (1).

(4) When the isolated conditions of the household where an eligible transportee resides require an eligible transportee to live away from the household in order to attend school, the eligible transportee is eligible for the room and board reimbursement. Approval to receive the room and board reimbursement must be obtained in the same manner prescribed in subsection (3). The per diem rate for room and board is $5.31 for one eligible transportee and $3.19 for each additional eligible transportee of the same household.

(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate is the cost of the study, provided that the course of instruction is approved by the trustees and supervised by the district.

History: En. 75-7019 by Sec. 296, Ch. 5, L. 1971; amd. Sec. 1, Ch. 169, L. 1973; amd. Sec. 3, Ch. 416, L. 1973; amd. Sec. 1, Ch. 470, L. 1975; amd. Sec. 1, Ch. 534, L. 1977; R.C.M. 1947, 75-7019; amd. Sec. 2, Ch. 590, L. 1979; amd. Sec. 2, Ch. 454, L. 1981; amd. Sec. 11, Ch. 711, L. 1991; amd. Sec. 2, Ch. 359, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 359 at end of (2) decreased multiplier from 22.5 cents to 21.25 cents for figuring daily reimbursement rate; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Supervised correspondence or home study as exception to compulsory enrollment, 20-5-102.

Supervised correspondence study, 20-7-116.

20-10-143. Budgeting for transportation and transmittal of transportation contracts. (1) The trustees of a district furnishing transportation to pupils who are residents of the district shall provide a transportation fund budget that is adequate to finance the district's transportation contractual obligations and any other transportation expenditures necessary for the conduct of its transportation program. The transportation fund budget must include:

(a) an adequate amount to finance the maintenance and operation of district owned and operated school buses;

(b) the annual contracted amount for the maintenance and operation of school buses by a private party;

(c) the annual contracted amount for individual transportation, including any increased amount because of isolation, which may not exceed the schedule amounts prescribed in 20-10-142;

(d) any amount necessary for the purchase, rental, or insurance of school buses; and

(e) any other amount necessary to finance the administration, operation, or maintenance of the transportation program of the district, as determined by the trustees.

(2) The trustees may include a contingency amount in the transportation fund budget for the purpose of enabling the district to fulfill an obligation to provide transportation in accordance with this title for:

(a) pupils not residing in the district at the time of the adoption of the preliminary budget and who subsequently became residents of the district during the school fiscal year; or

(b) pupils who have become eligible transportees since the adoption of the preliminary budget because their legal residence has been changed. The budgeted contingency amount may not exceed 10% of the transportation schedule amount as calculated under the provisions of 20-10-141 and 20-10-142 for all transportation services authorized by the schedules and provided by the district unless 10% of the transportation schedule amount is less than $100, in which case $100 is the maximum limitation for the budgeted contingency amount.

(3) A budget amendment to the transportation fund budget may be adopted subject to the provisions of 20-9-161 through 20-9-166.

(4) The transportation fund budgeted expenditures appropriated by the trustees must be reported on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103, and the adoption of the transportation fund budget must be completed in accordance with the school budgeting laws. When the adopted preliminary budget is sent to the county superintendent, the trustees shall also send copies of all completed transportation contracts for school bus transportation and individual transportation to the county superintendent. The contracts must substantiate all contracted transportation services incorporated in the preliminary budget, and after the county superintendent has utilized the contracts for that purpose but before the fourth Monday of July, he shall send all transportation contracts received to the superintendent of public instruction. When the county superintendent determines a deviation between the preliminary transportation fund budget amount for contracted transportation services and the contracted amount for the services, he shall immediately call the deviation to the attention of the appropriate trustees and shall allow the trustees to change the preliminary budgeted amount to compensate for the deviation.

History: En. 75-7020 by Sec. 297, Ch. 5, L. 1971; R.C.M. 1947, 75-7020; amd. Sec. 12, Ch. 711, L. 1991; amd. Sec. 44, Ch. 767, L. 1991.

Cross-References

Bonus payments deposited to transportation fund, 20-6-406.

Transportation fund as budgeted fund, 20-9-201.

20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget. Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated net proceeds taxes for new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988;

(h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(i) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(j) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142.

History: En. 75-7021 by Sec. 298, Ch. 5, L. 1971; R.C.M. 1947, 75-7021; amd. Sec. 6, Ch. 699, L. 1983; amd. Sec. 17, Ch. 695, L. 1985; amd. Sec. 20, Ch. 611, L. 1987; amd. Sec. 24, Ch. 655, L. 1987; amd. Sec. 7, Ch. 35, L. 1989; amd. Sec. 87, Ch. 11, Sp. L. June 1989; amd. Sec. 11, Ch. 267, L. 1991; amd. Sec. 13, Ch. 711, L. 1991; amd. Sec. 45, Ch. 767, L. 1991; amd. Sec. 2, Ch. 9, Sp. L. July 1992; amd. Sec. 12, Ch. 133, L. 1993; amd. Sec. 17, Ch. 563, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 133 in (5) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 563 inserted (1)(e) requiring the addition of transportation costs to the schedule amount; inserted (3)(h) requiring the addition of transportation payments to the total amount available for the reduction of property tax; and made minor changes in style.

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Cross-References

Property tax levies, Title 15, ch. 10.

Supervised correspondence study, 20-7-116.

Basic special levies, 20-9-331, 20-9-333.

20-10-145. State transportation reimbursement. (1) A district providing school bus transportation or individual transportation in accordance with this title, board of public education transportation policy, and superintendent of public instruction transportation rules must receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement is one-half of the reimbursement amounts established in 20-10-141 and 20-10-142 or one-half of the district's transportation fund budget, whichever is smaller, and must be computed on the basis of the number of days the transportation services were actually rendered, not to exceed 180 pupil-instruction days. In determining the amount of the state transportation reimbursement, an amount claimed by a district may not be considered for reimbursement unless the amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement must be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements must be routed by the district to the county superintendent, who after reviewing the claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by determining compliance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction. After making any necessary adjustments to the claims, the superintendent of public instruction shall order a disbursement from the state money appropriated by the legislature of the state of Montana for the state transportation reimbursement. The payment of all the district's claims within one county must be made to the county treasurer of the county, and the county superintendent shall apportion the payment in accordance with the apportionment order supplied by the superintendent of public instruction.

History: En. 75-7022 by Sec. 299, Ch. 5, L. 1971; R.C.M. 1947, 75-7022; amd. Sec. 14, Ch. 711, L. 1991; amd. Sec. 46, Ch. 767, L. 1991.

Cross-References

School fiscal year, 20-1-301.

State transportation reimbursement for special education children, 20-7-442.

20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(ii) net proceeds taxes and local government severance taxes on other oil and gas production occurring after December 31, 1988;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(v) federal forest reserve funds allocated under the provisions of 17-3-213; and

(vi) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available as determined in subsection (2)(b) to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments.

History: En. 75-7023 by Sec. 300, Ch. 5, L. 1971; R.C.M. 1947, 75-7023; amd. Sec. 15, Ch. 711, L. 1991; amd. Sec. 40, Ch. 10, L. 1993; amd. Sec. 13, Ch. 133, L. 1993; amd. Sec. 3, Ch. 359, L. 1993; amd. Sec. 18, Ch. 563, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 10 at beginning of (2)(c) deleted "notwithstanding the provisions of subsection (3)"; and made minor changes in style.

Chapter 133 in (3) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 359 deleted second sentence of (2)(b)(iv) that read: "The county transportation fund operating reserve may not be more than 35% of the final county transportation fund budget for the ensuing school fiscal year and must be used for the purpose of paying transportation fund warrants under the county transportation fund budget"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 563 inserted (1)(c) regarding an exception for county transportation reimbursement; and at end of (2)(a) inserted "or reimbursements under the mandatory attendance agreement provisions of 20-5-321".

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Cross-References

State transportation reimbursement for special education children, 20-7-442.

20-10-147. Bus depreciation reserve. (1) The trustees of a district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or radio.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county superintendent to the county commissioners on the fourth Monday of August as the bus depreciation reserve fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses or to replace the buses or radios for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer.

History: En. 75-7024 by Sec. 301, Ch. 5, L. 1971; amd. Sec. 1, Ch. 194, L. 1977; R.C.M. 1947, 75-7024; amd. Sec. 1, Ch. 69, L. 1991; amd. Sec. 11, Ch. 568, L. 1991; amd. Sec. 14, Ch. 133, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 133 in (2), in third sentence, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Cross-References

Administration of finances, Title 20, ch. 9, part 2.

School elections, Title 20, ch. 20.

Part 2
Food Services

Part Cross-References

"School food services" defined, 20-1-101.

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

Flour and bread, Title 50, ch. 34.

Wild animal meat to be donated to school lunch program, 87-1-226.

20-10-201. Acceptance, expenditure, and administration of federal school food services moneys. (1) The superintendent of public instruction is authorized to accept and direct the disbursement of funds appropriated by act of congress and apportioned to the state for use in financing school food services. This authorization shall apply to federal funds available for school food services under the National School Lunch Act (Public

Law 396, 79th Congress, chapter 281, 2nd session), Child Nutrition Act of 1966 (Public Law 642, 89th Congress), any amendments to these public laws, and any other public laws enacted to provide assistance for school food services.

(2) The superintendent of public instruction shall deposit all federal funds for school food services with the state treasurer who shall credit such funds to the agency fund. Any disbursement of the federal school food services funds shall be directed by the superintendent of public instruction.

(3) The superintendent of public instruction may:

(a) enter into agreements and cooperate with any federal agency, district, or other agency or person, prescribe such regulations, employ such personnel, and take such other action as he may deem necessary to:

(i) provide for the establishment, operation, and expansion of school food services; and

(ii) disburse federal and state funds according to the requirements of federal and state law;

(b) give technical advice and assistance to any district establishing or operating school food services and assist in the training of personnel for such services;

(c) accept any gift for use in providing school food services;

(d) conduct studies of methods of improving and expanding school food services and appraise the nutritive benefits of school food services.

(4) The superintendent of public instruction shall report annually to the board of public education on the financial, administrative, and operational phases of school food services.

History: En. 75-8002 by Sec. 443, Ch. 5, L. 1971; R.C.M. 1947, 75-8002; amd. Sec. 17, Ch. 281, L. 1983.

Cross-References

Miscellaneous programs fund, 20-9-507.

Acceptance and expenditure of federal money for state, 20-9-603.

20-10-202. Records, reports, and reviews. (1) The superintendent of public instruction shall prescribe regulations for keeping the financial and commodity records and making reports on school food services operated by a district. The financial records must be available for inspection and audit by federal and state officials authorized by law or contract to perform audits and be preserved for the period of time, not to exceed 5 years, the superintendent of public instruction may prescribe.

(2) The superintendent of public instruction shall conduct or cause to be conducted the inspections and administrative reviews of the financial records and the operation of school food services.

History: En. 75-8003 by Sec. 444, Ch. 5, L. 1971; R.C.M. 1947, 75-8003; amd. Sec. 26, Ch. 489, L. 1991.

Cross-References

Duty of Legislative Auditor to audit transactions of state agencies, 5-13-304.

20-10-203. School food commodities. The superintendent of public instruction is authorized to accept food commodities from the federal government and to distribute the food commodities to any district or nonpublic school that contracts for such distribution. The superintendent of public instruction may use for the shipping, handling, and other related costs of distributing the food commodities any funds advanced by legislative appropriation for the commodity state special revenue account. Such distribution costs shall be reimbursed by the participating districts and nonpublic schools. Those reimbursements shall be returned to the fund from which payments for the distribution costs were made.

History: En. 75-8004 by Sec. 445, Ch. 5, L. 1971; R.C.M. 1947, 75-8004; amd. Sec. 18, Ch. 281, L. 1983.

Cross-References

Power of districts to accept gifts, 20-6-601.

Duty of trustees to execute all contracts, 20-9-213.

20-10-204. Duties of trustees. (1) The trustees of any district offering school food services may:

(a) enter into contracts with the superintendent of public instruction for the purpose of obtaining funds, supplies and equipment, food commodities, and facilities necessary for the establishment, operation, and maintenance of the school food services;

(b) sell food to the pupils and adults participating in the school food services in accordance with the policies of the superintendent of public instruction;

(c) accept any gift for use of the school food services;

(d) allocate federal funds received in lieu of property taxation to the school food services fund in accordance with the provisions of 20-10-205; and

(e) adopt such policies for the operation of school food services as are consistent with the regulations of the superintendent of public instruction and with the laws of Montana.

(2) When the trustees of any district offer school food services, they shall establish a school food services fund for the deposit of proceeds from the sale of food, gifts, and other moneys specified in this section and for the expenditure of such moneys in support of the school food services.

History: En. 75-8005 by Sec. 446, Ch. 5, L. 1971; R.C.M. 1947, 75-8005.

Cross-References

Powers and duties of trustees generally, 20-3-324.

Power of districts to accept gifts, 20-6-601.

Administration of finances, Title 20, ch. 9, part 2.

Conflicts of interest, letting contracts, and calling for bids, 20-9-204.

Duty of trustees to execute all contracts, 20-9-213.

20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils. The trustees of any school district receiving federal reimbursement in lieu of taxes may request the allocation of a portion of such federal funds to the school food services fund to provide free meals for federally connected, indigent pupils when the pupils are declared eligible. In granting the request, the county superintendent shall comply with the following procedures:

(1) The indigency must be certified by the county department of welfare, assisted by a committee of three composed of the county superintendent, a representative of the county health department, and an authorized representative of the district.

(2) A certified, detailed claim for the amount of the federal reimbursement in lieu of taxes that is to be allocated to the school food services fund shall be filed by the district with the county superintendent. The county superintendent shall confirm or adjust the amount of the claim by:

(a) determining that the pupils included on the claim have been declared indigent under subsection (1);

(b) determining the number of meals provided the indigent pupils by the school food services;

(c) determining the price per meal charged the nonindigent pupil; and

(d) multiplying the number of meals provided to indigent pupils by the price per meal.

(3) After the county superintendent's confirmation or adjustment of the claim, he shall notify the district and the county treasurer of the approved amounts for allocation to the school food services fund. The district shall deposit the approved amount in the school food services fund on receipt of the succeeding federal payment in lieu of taxes.

History: En. 75-8006 by Sec. 447, Ch. 5, L. 1971; R.C.M. 1947, 75-8006.

Cross-References

Allocation of federal funds in lieu of property taxes, 20-9-143.

20-10-206. Pupils in state institutional schools included. The provisions of 20-10-201 through 20-10-205 shall apply to pupils in state institutional schools meeting the requirements established by the superintendent of public instruction and the applicable federal laws and regulations.

History: En. Sec. 1, Ch. 92, L. 1973; R.C.M. 1947, 75-8007.

20-10-207. School food services fund. The trustees of any district offering school food services shall establish a school food services fund under the provisions of 20-10-204. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: En. 75-7211 by Sec. 350, Ch. 5, L. 1971; R.C.M. 1947, 75-7211.

Cross-References

"Nonbudgeted fund" defined, 20-9-201.

CHAPTERS 11 THROUGH 14

RESERVED

CHAPTER 15

COMMUNITY COLLEGE DISTRICTS

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Part 1
General Provisions

20-15-101. Definition. As used in this title, unless the context clearly indicates otherwise, the term "community college district" means a body corporate and a subdivision of the state of Montana organized under a single board of trustees for the purpose of providing community college instruction to high school graduates and other persons who have terminated their formal high school education. Community college districts shall be in addition to any other districts existing in any portion of the area encompassed by the community college district.

History: En. 75-8101 by Sec. 448, Ch. 5, L. 1971; R.C.M. 1947, 75-8101.

20-15-102. Community college districts — name and corporate powers. A community college district shall be known as "Community College District of ...., Montana". In this name, the community college district may sue and be sued, levy and collect taxes within the limitations of the laws of Montana, and possess the same corporate powers as districts in this state, except as otherwise provided by law.

History: En. 75-8102 by Sec. 449, Ch. 5, L. 1971; R.C.M. 1947, 75-8102.

Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

20-15-103. Supervision and coordination by board of regents. Community college districts shall be under the supervision and coordination of the regents. The regents shall:

(1) supervise community college districts in accordance with the provisions of this section and 20-15-105;

(2) appoint a coordinator of community college districts and prescribe the duties of the coordinator;

(3) formulate and put into effect general policies for the supervision and coordination of community college districts;

(4) after consultation with the community college trustees, develop and implement policies that distinguish the regents' authority to supervise and coordinate and the trustees' authority to administer and control community colleges; and

(5) call an election, determine the results of the election, and order and implement the organization of a community college district in accordance with this chapter.

History: (1), (5)En. 75-5607.1 by Sec. 2, Ch. 266, L. 1977; Sec. 75-5607.1, R.C.M. 1947; (2)En. Sec. 450, Ch. 5, L. 1971; amd. Sec. 1, Ch. 406, L. 1971; Sec. 75-8103, R.C.M. 1947; R.C.M. 1947, 75-5607.1, 75-8103; (3), (4)En. Sec. 25, Ch. 392, L. 1979.

Cross-References

Board of Regents established, Art. X, sec. 9, Mont. Const.; 2-15-1505.

Powers and duties of Board of Regents generally, 20-25-301.

20-15-104. Pecuniary interest and letting contracts. (1) It shall be unlawful for any community college district trustee to have any pecuniary interest, either directly or indirectly, in the erection of any community college building in his district or in furnishing or repairing the same or be in any manner connected with the furnishing of supplies for the maintenance of the college or to receive or accept any compensation or reward for services rendered as trustee, except as herein provided.

(2) The board of trustees shall let contracts for building, furnishing, repairing, or other work or supplies for the benefit of the district according to the following rules and procedures:

(a) The board of trustees need not meet requirements relating to advertising or bidding if a proposed contract for building, furnishing, repairing or other work or supplies is for less than $5,000.

(b) Whenever the proposed contract costs are less than $25,000 but more than $5,000, the board of trustees shall procure at least three informal bids, if reasonably available, from contractors licensed in Montana.

(c) Whenever the proposed contract costs are more than $25,000, the board of trustees shall solicit formal bids and advertise once each week for at least 2 weeks in a newspaper published in each county wherein the area of the district lies, calling for bids to perform such work or furnish such supplies. If advertising is required, the board shall award the contract to the lowest responsible bidder. However, the board of trustees has the right to reject any and all bids.

History: En. 75-8118 by Sec. 465, Ch. 5, L. 1971; R.C.M. 1947, 75-8118; amd. Sec. 26, Ch. 392, L. 1979.

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Penalty for violation of school laws, 20-1-207.

20-15-105. Courses of instruction — tuition and fees. (1) A community college district shall provide instruction in academic, occupational, and adult education, subject to the approval of the board of regents of higher education. The board of trustees of such district may, in their discretion and upon approval of the board of regents, prescribe:

(a) tuition rates for in-district students, out-of-district students who are residents of the state of Montana, and students who are not residents of the state of Montana;

(b) matriculation charges; and

(c) incidental fees, including building fees, for students in the community college.

(2) In addition thereto, such board of trustees may prescribe such other fees as it considers necessary to maintain courses, taking into consideration such other funds as may be available under law for the support of such courses.

History: En. 75-8119 by Sec. 466, Ch. 5, L. 1971; amd. Sec. 8, Ch. 406, L. 1971; amd. Sec. 4, Ch. 121, L. 1977; R.C.M. 1947, 75-8119.

Cross-References

Vocational education, Title 20, ch. 7, part 3.

Adult education, Title 20, ch. 7, part 7.

Charges for tuition — waivers, 20-25-421.

Capacity of minors to borrow for education, 41-1-303.

20-15-106. Retirement systems for employees and teachers. (1) Teachers of a community college district are subject to and eligible for the benefits of the Montana teachers' retirement system.

(2) The employees of a community college district not eligible for teachers' retirement system benefits are subject to and eligible for the benefits of the Montana public employees' retirement system.

History: En. 75-8120 by Sec. 467, Ch. 5, L. 1971; R.C.M. 1947, 75-8120; amd. Sec. 27, Ch. 392, L. 1979.

Cross-References

Applicability of Public Employees' Retirement System, 19-3-403.

Teachers' retirement system, Title 19, ch. 20.

20-15-107. Lease or sale of district property. Whenever a district has property that is not required for the use of the district, such property may be leased or sold and conveyed to the community college district. Such lease or sale of property shall be consummated in accordance with the provisions of the law of Montana.

History: En. 75-8124 by Sec. 471, Ch. 5, L. 1971; R.C.M. 1947, 75-8124.

Cross-References

School property, Title 20, ch. 6, part 6.

Trustees to execute all contracts, 20-9-213.

Building fund to be credited when property sold, 20-9-508.

20-15-108. Baccalaureate degrees not to be granted. A community college district shall be prohibited from granting baccalaureate degrees.

History: En. 75-8126 by Sec. 1, Ch. 407, L. 1971; R.C.M. 1947, 75-8126.

Cross-References

Regulation of award of degrees — penalty, 20-25-107.

Authority of regents to grant diplomas and degrees, 20-25-301.

20-15-109. Acceptance of donations. The board of trustees of a community college district, on behalf of the district, is hereby authorized and empowered to accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the dower or will of the testator or without any conditions imposed.

History: En. 75-8123 by Sec. 470, Ch. 5, L. 1971; R.C.M. 1947, 75-8123.

Part 2

Organization and Trustees

20-15-201. Requirements for organization of community college district. The registered electors in any area of the state of Montana may request an election for the organization of a community college district where the proposed community college district conforms to the following requirements:

(1) The proposed area coincides with the then-existing boundaries of contiguous elementary districts of one or more counties.

(2) The taxable value of the proposed area is at least $10 million.

(3) There are at least 700 pupils regularly enrolled in public and private high schools located in the proposed area.

History: **En. 75-8104 by Sec. 451, Ch. 5, L. 1971; amd. Sec. 47, Ch. 566, L. 1977; R.C.M. 1947, 75-8104.**

Cross-References

Elementary districts, Title 20, ch. 6, part 2.

20-15-202. Petition for organization of community college district. When the area of a proposed community college district satisfies the specified requirements, the registered electors of the area may petition the regents to call an election for the organization of a community college district. Such petition shall be signed by at least 20% of the registered electors within each county or a part of a county included in the area of the proposed community college district.

History: **En. 75-8105 by Sec. 452, Ch. 5, L. 1971; amd. Sec. 2, Ch. 406, L. 1971; R.C.M. 1947, 75-8105.**

Cross-References

Registration of electors, Title 13, ch. 2.

Qualification and registration of electors, Title 20, ch. 20, part 3.

20-15-203. Call of community college district organization election — proposition statement. (1) A petition for the organization of a community college district shall be presented to the regents. The regents shall examine the petition to determine if the petition satisfies the petitioning and community college district organizational requirements.

(2) If the regents determine that the petition satisfies such requirements, the regents shall order the elementary districts encompassed by the proposed community college district to conduct an election on the community college district organization proposition. Such election shall be held on the next succeeding regular school election day, except that an election required by a petition received by the regents less than 60 days before the regular school election day shall be held at the regular school election in the following school fiscal year.

(3) At such election the proposition shall be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of .... (elementary districts shall be listed by county), State of Montana, a community college district for the offering of 13th- and 14th-year courses, to be known as the Community College District of ...., Montana, under the provisions of the laws authorizing community college districts in Montana, as prayed in the petition filed with the Board of Regents at Helena, Montana, on the .... day of ...., 19...?

☐ FOR organization.

☐ AGAINST organization.

History: **En. 75-8106 by Sec. 453, Ch. 5, L. 1971; amd. Sec. 3, Ch. 406, L. 1971; R.C.M. 1947, 75-8106.**

Cross-References

Regular school election day and special school elections, 20-20-105.

20-15-204. Election of trustees — districts from which elected — terms of office. (1) The regents shall provide for the election of trustees of the proposed community college district at the election held for the approval of its organization. Seven trustees shall be elected at large, except that should there be in such proposed community college district one or more high school districts or part of a high school district within the community college district with more than 43% and not more than 50% of the total population of the proposed district, as determined by the last census, then each such district or part of district shall elect three trustees and the remaining trustees shall be elected at large from the remainder of the proposed community college district. Should any such high school district or such part of a high school district have more than 50% of the population of the proposed district, then four trustees shall be elected from such high school district or such part of high school district and three trustees at large from the remainder of the proposed community college district.

(2) If the trustees are elected at large throughout the entire proposed community college district, the three receiving the greatest number of votes shall be elected for a term of 3 years, the two receiving the next greatest number of votes, for a term of 2 years, and the two receiving the next greatest number of votes, for a term of 1 year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the three who shall serve for 3 years, the two who shall serve for 2 years, and the two who shall serve for 1 year. Thereafter, all trustees elected shall serve for terms of 3 years each.

History: En. 75-8107 by Sec. 454, Ch. 5, L. 1971; amd. Sec. 4, Ch. 406, L. 1971; amd. Sec. 14, Ch. 137, L. 1973; amd. Sec. 1, Ch. 159, L. 1975; R.C.M. 1947, 75-8107.

20-15-205. Call for nominations of trustee candidates and notice. (1) A call for nominations of trustee candidates for the proposed community college district shall be made by the regents.

(2) Notice of the call for nominations shall be published in at least one newspaper of general circulation in each county or any portion of a county included in the proposed community college district once a week for 3 consecutive weeks, the last insertion to be no less than 5 weeks prior to the date of the election. Such notice shall describe the geographical composition of the board of trustees membership, nomination procedure, and the proposal for the organization of a community college district.

History: En. 75-8108 by Sec. 455, Ch. 5, L. 1971; amd. Sec. 5, Ch. 406, L. 1971; R.C.M. 1947, 75-8108.

20-15-206. Nomination of candidates and provision of sample ballot. (1) Nominations of candidates for the trustee positions must be filed with the regents at least 30 days prior to the date of the election. Any five qualified electors may file nominations of as many persons as are to be elected to the board of trustees of the proposed community college district from their respective community college trustee election areas.

(2) The regents shall provide the trustees of each district ordered to conduct the community college district organization election with a sample of

the ballot for the election of the board of trustees. Such sample ballot shall be reproduced by the trustees in a sufficient number to be used as the trustee election ballot.

History: En. 75-8109 by Sec. 456, Ch. 5, L. 1971; amd. Sec. 6, Ch. 406, L. 1971; R.C.M. 1947, 75-8109.

20-15-207. Notice of organization election. Notice of the community college district organization election and the accompanying election of a board of trustees for the proposed community college district shall be given by the regents, by publication in at least one newspaper of general circulation in each county or any portion of a county included in the proposed community college district, once a week for 3 consecutive weeks, the last insertion to be no more than 1 week prior to the date of the election.

History: En. 75-8110 by Sec. 457, Ch. 5, L. 1971; amd. Sec. 7, Ch. 406, L. 1971; R.C.M. 1947, 75-8110.

20-15-208. Conduct of election. The election for the organization of the community college district and the election of trustees for such community college district shall be conducted, in accordance with the school election laws, by the trustees of the elementary districts ordered to call such election. The cost of conducting such election shall be borne by the districts.

History: En. 75-8111 by Sec. 458, Ch. 5, L. 1971; R.C.M. 1947, 75-8111.

Cross-References

School elections generally, Title 20, ch. 20.

Election expenses, 20-20-107.

20-15-209. Determination of approval or disapproval of proposition — subsequent procedures if approved. (1) To carry, the proposal to organize the community college district must receive a majority of the total number of votes cast thereon, and the coordinator of community college districts, from the results so certified and attested, shall determine whether the proposal has received the majority of the votes cast thereon for each county within the proposed district and shall certify the results to the regents. Approval for the organization of a new community college district shall be granted at the discretion of the legislature acting upon the recommendation of the regents. Should the certificate of the coordinator of community college districts show that the proposition to organize such community college district has received a majority of the votes cast thereon in each county within the proposed district, the regents may make an order declaring the community college district organized and cause a copy thereof to be recorded in the office of the county clerk and recorder in each county in which a portion of such new district is located. If the proposition carries, the regents also shall determine which candidates have been elected trustees. Should the proposition to organize the community college district fail to receive a majority of the votes cast thereon, no tabulation shall be made to determine the candidates elected trustees.

(2) Within 30 days of the date of the organization order, the regents shall set a date and call an organization meeting for the board of trustees of the community college district and shall notify the duly elected trustees of their membership and of the organization meeting. Such notification shall designate a temporary chairman and secretary for the purposes of organization.

History: En. 75-8112 by Sec. 459, Ch. 5, L. 1971; amd. Sec. 1, Ch. 164, L. 1971; amd. Sec. 2, Ch. 407, L. 1971; R.C.M. 1947, 75-8112.

20-15-210. Qualification and organization of board of trustees. (1) Newly elected members of the board of trustees of the community college district shall be qualified by taking the oath of office prescribed by the constitution of Montana. At the organization meeting called by the board of regents, the board of trustees shall be organized by the election of a chairman and a secretary.

(2) The treasurer of the community college district is the county treasurer of the county in which the community college facilities are located. The duties of the county treasurer are referenced in 20-9-206, 20-9-212, 20-9-222, and 20-9-224.

History: En. 75-8113 by Sec. 460, Ch. 5, L. 1971; amd. Sec. 33, Ch. 100, L. 1973; R.C.M. 1947, 75-8113; amd. Sec. 28, Ch. 392, L. 1979.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Declaration in lieu of oath, 1-6-104.

Oath of office, 20-1-202.

20-15-211 through 20-15-218 reserved.

20-15-219. Qualifications for office of trustee — nominating petitions. (1) Any person who is qualified to vote in a community college district under the provisions of 20-20-301 is eligible for the office of community college trustee.

(2) Any five electors of a community college district qualified under the provisions of 20-20-301 may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. A nominating petition containing the signatures of the five electors and the name of each person nominated for candidacy must be submitted to the election clerk designated by the board of trustees no less than 30 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated must also be indicated.

History: En. Sec. 3, Ch. 392, L. 1979.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-15-220. Trustee election ballot. (1) The trustee election ballot must be substantially in the following form:

Official Ballot
Community College Trustee Election
Instructions to Voters

Make an "X" or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term.

☐ . . . . List the names of the candidates for the 3-year term with a vacant square in front of each name.

Vote for (indicate number to be elected) for a 2-year term.

☐ . . . . List the names of the candidates for the 2-year term with a vacant square in front of each name.

Vote for (indicate number to be elected) for a 1-year term.

☐ . . . . List the names of the candidates for the 1-year term with a vacant square in front of each name.

(2) In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need be used. The ballot must also be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election.

History: En. Sec. 4, Ch. 392, L. 1979.

20-15-221. Election of trustees after organization of community college district. (1) After organization, the registered electors of the community college district qualified to vote under the provisions of 20-20-301 shall annually vote for trustees on the regular school election day provided for in 20-3-304. The election shall be conducted in accordance with the election provisions of this title whenever such provisions are made applicable to community college districts. Such elections shall be conducted by the component elementary school districts within such community college district upon the order of the board of trustees of the community college district. The order shall be transmitted to the appropriate trustees not less than 40 days prior to the regular school election day.

(2) Notice of the community college district trustee election shall be given by the board of trustees of the community college district by publication in one or more newspapers of general circulation within each county, not less than once a week for 2 consecutive weeks, the last insertion to be no more than 1 week prior to the date of the election. This notice shall be in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws.

(3) Should trustees be elected other than at large throughout the entire district, then only those qualified voters within the area from which the trustee or trustees are to be elected shall cast their ballots for the trustee or trustees from that area. In addition to the nominating petition required by 20-15-219(2), all candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees of the community college district not less than 30 days prior to the date of election. If an electronic voting system or voting machines are not used in the component elementary school district or districts which conduct the election, the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in such component districts at the expense of the community college district, but in all other respects said elections shall be conducted in accordance with the school election laws. All costs incident to election of the community college trustees shall be borne by

the community college district, including one-half of the compensation of the judges for the school elections; provided that if the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election.

History: En. 75-8114 by Sec. 461, Ch. 5, L. 1971; amd. Sec. 2, Ch. 121, L. 1977; R.C.M. 1947, 75-8114; amd. Sec. 29, Ch. 392, L. 1979.

Cross-References

School elections, Title 20, ch. 20.

Regular school election day and special school elections, 20-20-105.

Election expenses, 20-20-107.

20-15-222. Results of election — qualifying oath — term of office. (1) When the board of trustees of the community college district has received all the certified results of the election from the component elementary districts, the then-qualified members of the board of trustees of such community college district shall tabulate the results so received, shall declare and certify the candidate or candidates receiving the greatest number of votes to be elected to the position or positions to be filled, and shall declare and certify the results of the votes cast on any proposition presented at such election.

(2) (a) No person who receives a certificate of election as a community college trustee may assume the trustee position until he has qualified by taking an oath of office prescribed by the constitution of Montana at the next regularly scheduled meeting of the board of trustees after receipt of the certificate of election.

(b) If the elected person does not qualify in accordance with this requirement, another person must be appointed in a manner provided by 20-15-223 and shall serve until the next regular election.

(3) After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

History: En. 75-8115 by Sec. 462, Ch. 5, L. 1971; R.C.M. 1947, 75-8115; amd. Sec. 5, Ch. 392, L. 1979.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Declaration in lieu of oath, 1-6-104.

Oath of office, 20-1-202.

20-15-223. Vacancies. (1) A community college trustee position is vacant whenever the incumbent:

(a) dies;

(b) resigns; or

(c) is removed under the provisions of 20-15-227.

(2) A trustee position is also vacant whenever an elected candidate fails to qualify under the provisions of 20-3-307.

(3) Any vacancy of a trustee position shall be filled by appointment by majority vote of the remaining trustees, and the person appointed shall hold office until the next regular school election day, when a trustee shall be elected for the remainder of the unexpired term.

History: En. 75-8116 by Sec. 463, Ch. 5, L. 1971; R.C.M. 1947, 75-8116; amd. Sec. 30, Ch. 392, L. 1979.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-15-224. Board of trustees — organization, meetings, quorum, mileage, and seal. (1) (a) The trustees of each community college district shall annually organize as a governing board of the community college district at the next regularly scheduled meeting after the regular election day and after the issuance of the election certificate to the newly elected trustees.

(b) In order to organize, the trustees of the community college district shall be given notice by the coordinator of the time and place where the organization meeting will be held, and at such meeting they shall choose one of their members as chairman and as secretary. In addition, the trustees may employ or appoint a competent person who is not a member of the trustees as the clerk of the community college district.

(c) The chairman and secretary of the trustees of the community college district shall serve until the next organization meeting. The chairman shall preside at all meetings of the trustees in accordance with the customary rules of order. He shall perform the duties prescribed by this title and any other duties that normally pertain to such office.

(2) The board of trustees of the community college shall hold monthly meetings within the community college district on such day of the month the trustees may set. The president and secretary of the board or a majority of the board may also call special meetings of the board of trustees at any time and place within the community college district if in their judgment necessity requires it. The secretary of the board shall give each member a 48-hour written notice of all special meetings.

(3) A majority of the board of trustees shall constitute a quorum for the transaction of business, except that no contract shall be let, teacher employed or dismissed, or bill approved unless a majority of the total board membership shall vote in favor of such action.

(4) A member of the board of trustees shall receive mileage as provided for in 2-18-503 for the distance necessarily traveled in going to and returning from the place of the meeting and his place of residence each day that such trip is actually made.

(5) The board shall keep a common seal with which to attest its official acts.

History: En. 75-8117 by Sec. 464, Ch. 5, L. 1971; amd. Sec. 1, Ch. 163, L. 1971; amd. Sec. 3, Ch. 121, L. 1977; R.C.M. 1947, 75-8117; (1)En. Sec. 8, Ch. 392, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Disrupting meeting as disorderly conduct, 45-8-101.

20-15-225. Powers and duties of trustees. (1) The trustees of a community college district shall, subject to supervision by the board of regents:

(a) have general control and supervision of the community college;

(b) adopt rules, not inconsistent with the constitution and the laws of the state, for the government and administration of the community college;

(c) grant certificates and degrees to the graduates of the community college;

(d) keep a record of their proceedings;

(e) when not otherwise provided by law, have control of all books, records, buildings, grounds, and other property of the community college;

(f) receive from the state board of land commissioners; other boards, agencies, or persons; or the government of the United States all funds, income, and other property the community college may be entitled to receive or accept and use and appropriate the property for the specific purpose of the entitlement, grant, or donation;

(g) have general control of all receipts and disbursements of the community college;

(h) appoint and dismiss a president and faculty for the community college; appoint and dismiss any other necessary officers, agents, and employees; fix their compensation; and set the terms and conditions of their employment;

(i) administer the tuition provision and otherwise govern the students of the community college district in accordance with the provisions of this chapter;

(j) call and conduct the elections of the district in accordance with the school election chapter of this title;

(k) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of this title;

(l) establish employee benefits, other than retirement benefits, and fix their limits in accordance with 2-18-701 through 2-18-704; and

(m) participate in district boundary change actions in accordance with the provisions of the district organization chapter of this title.

(2) The trustees of a community college district shall hold in trust all real and personal property of the district for the benefit of the college and students.

(3) The trustees of a community college district may enter into agreements with the western interstate commission for higher education, or similar intrastate, interstate, or international agreements, for the benefit of the district and students.

History: En. 75-8117.1 by Sec. 5, Ch. 121, L. 1977; R.C.M. 1947, 75-8117.1; (2), (3)En. Secs. 10, 11, Ch. 392, L. 1979; amd. Sec. 31, Ch. 392, L. 1979.

Cross-References

Applicability of Public Employees' Retirement System, 19-3-403.

Teachers' Retirement System, Title 19, ch. 20.

Elementary districts, Title 20, ch. 6, part 2.

School elections, Title 20, ch. 20.

Governmental Code of Fair Practices, Title 49, ch. 3.

20-15-226. Personal liability of trustees. (1) The trustees of each community college district are responsible for the proper administration and utilization of all money of the district. Failure or refusal to do so constitutes grounds for removal from office.

(2) Trustees consenting to illegal use of money are jointly and individually liable to the district for any losses sustained by the district. The county attorney shall prosecute any proceedings arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action is liable for the costs if the action fails.

History: En. Sec. 9, Ch. 392, L. 1979.

Cross-References

Penalty for violation of school laws, 20-1-207.

Official misconduct, 45-7-401.

20-15-227. Trustee removal procedure. (1) Any person may seek the removal of a community college trustee by filing a complaint with the board of county commissioners, containing charges based on one or more of the grounds cited in 20-15-228.

(2) If upon receiving such a complaint it appears that there is probable cause for removal, the board of county commissioners shall suspend such trustee from his trustee position until charges can be heard in the appropriate district court. The board of county commissioners shall then transmit the complaint, together with a statement of suspension, to the district court.

History: En. Sec. 6, Ch. 392, L. 1979.

20-15-228. Grounds for removal. A community college trustee may be removed whenever he:

(1) moves his residence from the applicable community college district;

(2) is no longer a registered elector of the community college district under the provisions of 20-20-301;

(3) is absent from the district 60 consecutive days;

(4) fails to attend three consecutive meetings of the trustees without reasonable cause;

(5) fails to perform responsibilities in accordance with 20-15-226; or

(6) ceases to have the capacity to hold office.

History: En. Sec. 7, Ch. 392, L. 1979.

Cross-References

Residence — rules for determining, 1-1-215.

20-15-229. Audit of district. A community college district is subject to audit by the legislative auditor in the same manner as a state agency. A community college district may contract for an audit with a private accounting firm, subject to approval of the legislative auditor.

History: En. Sec. 14, Ch. 392, L. 1979.

Cross-References

Legislative Audit Act, Title 5, ch. 13.

20-15-230 reserved.

20-15-231. Annexation of territory of districts to community college district. (1) Whenever 10% of the registered electors of an elementary district or districts of a county that is contiguous to the existing community college district petition the board of trustees of a community college district for annexation of the territory encompassed in such elementary school districts, the board of trustees of the community college district may order an annexation election in the area defined by the petition. Such election shall be held on the next general election day.

(2) (a) Prior to the election on the question of annexation, the trustees shall adopt a plan that includes:

(i) a schedule that provides for the orderly transition from the existing trustee representation to the representation required by 20-15-204, with such transition period not to exceed 3 years from the date of the election on the question of annexation;

(ii) provisions relating to the assumption or nonassumption of existing community college district bonded indebtedness by the annexed area and provisions relating to the responsibilities of the annexed area for any bonded indebtedness if it withdraws from the district; and

(iii) a procedure by means of which the electors of the annexed area may withdraw the annexed area from the community college district and the conditions of such withdrawal.

(b) The plan required by this subsection (2) may not be changed by the trustees without the approval of a majority of the electors of the annexed area voting on the question. The bonding provisions of the plan set forth pursuant to subsection (2)(a)(ii) may not be changed.

(3) The election shall be conducted in the proposed area for annexation in accordance with the requirements of the community college organization election, except that the board of trustees of the community college shall perform the requirements of the board of regents and there shall not be an election of the board of trustees of the community college.

(4) The proposition on the ballot shall be as follows:

Shall school districts .... be annexed to and become a part of the Community College District of ...., Montana?

☐ FOR annexation.

☐ AGAINST annexation.

(5) To carry, the proposals to annex must receive a majority of the total votes cast thereon. Upon receipt of the certified results of the election from the elementary districts encompassed in the proposed area to be annexed, the board of trustees of the community college district shall canvass the vote and declare the results of the election. If the annexation proposition carries, a certified copy of the canvassing resolution shall be filed in the office of the county clerk and recorder of the county encompassing the area to be annexed and, upon such filing, the area to be annexed shall then become a part of the community college district.

History: En. 75-8125 by Sec. 472, Ch. 5, L. 1971; amd. Sec. 1, Ch. 162, L. 1971; R.C.M. 1947, 75-8125; amd. Sec. 4, Ch. 575, L. 1983; amd. Sec. 1, Ch. 474, L. 1985.

20-15-232 through 20-15-240 reserved.

20-15-241. Community college service regions — creation. (1) The governing body of an elementary school district, high school district, county, or municipality not within a community college district may designate itself a community college service region as provided in this section.

(2) A service region may be designated only if, within 12 months preceding any designation, the following conditions are met:

(a) the service plan required by subsection (3) is available;

(b) the board of trustees of the community college district that will offer services within the region has approved the designation;

(c) the electors within the region have approved the designation by a majority of votes cast on the question in an election held on a general election day; and

(d) the board of regents has approved the designation.

(3) (a) At least 90 days prior to the granting of any of the approvals listed in subsections (2)(b) through (d), a written plan must be made available which:

(i) details the services the community college district will offer within the region;

(ii) details who will be eligible to use the services and the charges that will be made to users;

(iii) indicates the facilities that will be used to house the services;

(iv) lists the direct and indirect costs of the services and the apportionment of those costs between the community college district and the governing body designating the service region;

(v) estimates the number of persons expected to use the services within the region; and

(vi) estimates the mill levy necessary to fund the service region.

(b) The plan may be revised jointly by the region governing body, board of regents, and the board of trustees of the community college district as such revision may be necessary.

(4) A designation is effective for 5 years and after 5 years is effective unless rescinded by a majority of electors casting votes on the question in an election held on any general election day following expiration of the 5-year period. The question on rescission must be put on the ballot when requested at least 90 days prior to the election by the governing body designating the service region, by the community college board, or by a petition signed by 20% of the registered electors within the service region. The rescission is effective at the end of the first full academic year following the election rescinding the district designation.

History: En. Sec. 1, Ch. 575, L. 1983.

Cross-References

Tax levy for community college service region, 20-15-314.

Part 3
Finance

20-15-301. Sources of financing for and types of capital expenditures. (1) The board of trustees of any community college district may:

(a) purchase, lease, build, enlarge, alter, or repair school buildings and dormitories;

(b) furnish and equip buildings;

(c) purchase sites for buildings;

(d) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of chapter 9, part 4, of this title.

(2) The board of trustees of a community college district may borrow money for the purposes of this section and repay the obligations from the various revenues of the college.

History: En. 75-8122 by Sec. 469, Ch. 5, L. 1971; amd. Sec. 2, Ch. 419, L. 1973; R.C.M. 1947, 75-8122; amd. Sec. 1, Ch. 488, L. 1989.

Cross-References

School bonds, Title 20, ch. 9, part 4.

20-15-302. Repealed. Sec. 8, Ch. 495, L. 1981.

History: **En. Sec. 1, Ch. 401, L. 1971; R.C.M. 1947, 75-8127; amd. Sec. 32, Ch. 392, L. 1979.**

20-15-303. Repealed. Sec. 8, Ch. 495, L. 1981.

History: **En. Sec. 2, Ch. 401, L. 1971; amd. Sec. 1, Ch. 243, L. 1975; R.C.M. 1947, 75-8128.**

20-15-304. Federal and state aid. The board of trustees of a community college district is hereby authorized to accept funds from the federal government or the state of Montana, their instrumentalities, or any of their agencies in aid of any one or more purposes or in maintaining and operating the community college.

History: **En. Sec. 4, Ch. 401, L. 1971; R.C.M. 1947, 75-8130.**

20-15-305. Adult education tax levy. A community college shall be considered a district for the purposes of adult education and under the provisions for adult education may levy a 1-mill tax for the support of its adult education program when the superintendent of public instruction approves such program.

History: **En. Sec. 3, Ch. 401, L. 1971; R.C.M. 1947, 75-8129.**

Cross-References

Adult education, Title 20, ch. 7, part 7.

20-15-306. Repealed. Sec. 8, Ch. 495, L. 1981.

History: **En. Sec. 5, Ch. 401, L. 1971; R.C.M. 1947, 75-8131.**

20-15-307. Repealed. Sec. 8, Ch. 495, L. 1981.

History: **En. Sec. 6, Ch. 401, L. 1971; amd. Sec. 28, Ch. 266, L. 1977; R.C.M. 1947, 75-8132.**

20-15-308. Deposit of moneys. Community college district moneys shall be deposited with the county treasurer of the county where the community college is located or with other depositories approved by the regents.

History: **En. Sec. 7, Ch. 401, L. 1971; R.C.M. 1947, 75-8133.**

20-15-309. Proposed budget. The board of trustees of a community college district shall submit a proposed budget to the board of regents by August 15 immediately preceding each regular legislative session. The proposed budget shall be for the next biennium and in a form approved by the state budget director and the commissioner of higher education and shall be calculated in the same manner as the operating budget described in 20-15-312. The board of regents shall review the proposed budget and all its components and make any changes it determines necessary. By the following September 1, the board of regents shall submit its proposal for funding the community colleges to the budget director and the legislative fiscal analyst.

History: **En. Sec. 1, Ch. 495, L. 1981.**

Cross-References

School budgeting procedure applicable to community colleges, 20-9-101.

Completion, filing, and delivery of final budgets, 20-9-134.

Emergency budget petitions, 20-9-161, 20-9-163.

Emergency budgets, 20-9-165.

20-15-310. Appropriation. It is the intent of the legislature that all community college spending, other than from restricted funds or funds generated by an optional, voted levy, be governed by the provisions of this part and the state general appropriations act. The state general fund appropriation must be based on a budget amount per full-time equivalent student, as determined by the legislature. The student count may not include those enrolled in community service courses as defined by the board of regents.

History: En. Sec. 2, Ch. 495, L. 1981; amd. Sec. 1, Ch. 494, L. 1989.

20-15-311. Funding sources. The annual operating budget of a community college district shall be financed from the following sources:

(1) the estimated revenues to be realized from student tuition and fees, except those related to community service courses as defined by the board of regents;

(2) a mandatory mill levy on the community college district;

(3) the 1-mill adult education levy authorized under provisions of 20-15-305;

(4) the state general fund appropriation;

(5) an optional voted levy on the community college district that shall be submitted to the electorate in accordance with general school election laws;

(6) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

(7) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses as defined by the board of regents shall be considered restricted to a specific purpose;

(8) income from a political subdivision that is designated a community college service region under 20-15-241.

History: En. Sec. 3, Ch. 495, L. 1981; amd. Sec. 3, Ch. 575, L. 1983.

20-15-312. Calculation and approval of operating budget. (1) Annually by June 15, the board of trustees of a community college shall submit an operating budget to the board of regents for their review. The operating budget of the community college must be financed in the following manner:

(a) The general fund appropriation must represent a specific percentage of the budget amount per full-time equivalent student, as determined by the legislature. This percentage must be specified in the appropriations act appropriating funds to the community colleges for each biennium. This percentage does not apply to any portion of the unrestricted budget in excess of the budget amount per full-time equivalent student, as determined by the legislature.

(b) The mandatory levy amount must represent a specific percentage of the budget amount per full-time equivalent student, as determined by the legislature. This percentage must be specified for each community college by the board of trustees of the district and approved by the board of regents.

(c) The funding obtained in subsections (a) and (b) of subsection (1) plus the revenue derived from tuition and fee schedules approved by the board of regents and unrestricted income from any other source is the amount of the unrestricted budget. A detailed expenditure schedule for the unrestricted budget must be submitted to the board of regents for their review and approval.

(d) The amount estimated to be raised by the voted levy must be detailed separately in an expenditure schedule.

(e) The spending of each restricted funding source shall be detailed separately in an expenditure schedule.

(f) The expenditure schedules provided in subsections (c), (d), and (e) of subsection (1) must represent the total operating budget of the community college.

(2) The board of regents shall review the proposed total operating budget and all its components and make any changes it determines necessary. The board of trustees of a community college district shall operate within the limits of the operating budget approved by the board of regents.

History: En. Sec. 4, Ch. 495, L. 1981; amd. Sec. 2, Ch. 494, L. 1989.

Cross-References

School budgeting procedure applicable to community colleges, 20-9-101.

Completion, filing, and delivery of final budgets, 20-9-134.

Emergency budget petitions, 20-9-161, 20-9-163.

Emergency budgets, 20-9-165.

20-15-313. Tax levy. On the second Monday in August, the board of county commissioners of any county where a community college district is located shall fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by subsection (1)(b) of 20-15-312 and the voted levy prescribed by subsection (5) of 20-15-311 if one has been approved by the voters. When a community college district has territory in more than one county, the board of county commissioners in each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county.

History: En. Sec. 5, Ch. 495, L. 1981.

Cross-References

Property tax levies, Title 15, ch. 10.

20-15-314. Tax levy for community college service region. A governing body designating a community college service region as provided in 20-15-241 may levy a tax on all real and personal property within the region at a rate required to finance the services offered by a community college district for the region. The levy is in addition to any other levies allowed by law and is not subject to any statutory or charter limitations on levies. The levy must be made at the same time and in the same manner as the general levy of the political subdivision designating the region is made, and the revenues generated thereby must be collected at the same time and in the same manner. Within 30 days of collection, the appropriate revenues must be transmitted to the participating community college district.

History: En. Sec. 2, Ch. 575, L. 1983.

Cross-References

Community college service regions, 20-15-241.

20-15-315 through 20-15-320 reserved.

20-15-321. General fund cash reserve. At the end of each school fiscal year the board of trustees of a community college district may designate a portion of the general fund end-of-the-year cash balance as a cash reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. The amount of the general fund cash balance that is earmarked as cash reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

History: En. Sec. 3, Ch. 488, L. 1989.

20-15-322 reserved.

20-15-323. Definition of emergency for budgeting purposes. As used in this chapter, unless the context clearly indicates otherwise, the term "emergency" for the purpose of community college budgeting means:

(1) the destruction or impairment of any community college district property necessary to the maintenance of the district, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering the property unfit for its present use;

(2) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(3) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district; or

(4) any other reason of similar consequence that has been approved by the board of regents upon petition by the trustees of the district.

History: En. Sec. 51, Ch. 767, L. 1991.

20-15-324. Resolution for emergency budget — petition to board of regents. (1) Whenever the trustees of a community college district decide that an emergency exists, they may adopt a resolution proclaiming the emergency by a unanimous vote of all members present at any meeting for which each trustee has been given reasonable notice of the time and place of holding the meeting. The emergency resolution must also state the facts constituting the emergency, the estimated amount of money required to meet the emergency, the funds affected by the emergency, and the time and place the board will meet for the purpose of considering and adopting an emergency budget for the funds for the current school fiscal year.

(2) If the trustees decide that an emergency exists for any reason other than the conditions specified in 20-9-161 (1) through (3), they shall petition the board of regents for permission to adopt a resolution of emergency. The petition must set forth in writing the reasons for the request, the district funds affected by the emergency, the estimated amount of money required to meet the emergency for each affected fund, the anticipated sources of financing for the emergency expenditures, and any other information required by the board of regents. The petition must be signed by each trustee.

(3) The board of regents shall promptly approve or disapprove the petition requesting approval to adopt a resolution of emergency. If the petition is approved, the trustees may adopt a resolution of emergency and take all other steps required for the adoption of an emergency budget. Approval of a petition by the board of regents authorizes the board of trustees to initiate emergency budget proceedings by resolution and does not relieve the trustees of the necessity of complying with the requirements of the emergency budgeting laws.

History: En. Sec. 52, Ch. 767, L. 1991.

20-15-325. Emergency budget limitation, preparation, and adoption procedures. (1) The meeting of the trustees of a community college district to consider and adopt an emergency budget must be open to the public, and any taxpayer in the district has the right to appear and be heard. If at the meeting a majority of the trustees present find that an emergency exists, the trustees may make and adopt a preliminary emergency budget, on the regular budget form, setting forth fully the facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund that was included on the final budget of the district for the current fiscal year. The budget must be itemized to show the amount appropriated for each item as required on the budget form.

(2) When the emergency is the result of increased enrollment, the maximum amount of the emergency budget for all funds must be determined by budget amendment.

(3) If another type of emergency occurs, the budget must be limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the emergency and the preliminary emergency budget must include the details of the proposed expenditures.

(4) After a majority of the trustees have voted to adopt the emergency budget, it must be signed by the chairman of the trustees and the clerk of the district and copies must be sent to the county superintendent, the county treasurer, and the board of regents.

History: En. Sec. 53, Ch. 767, L. 1991.

20-15-326. Determination of available financing — fixing and levying property taxation for emergency budget. (1) After the last day of the fiscal year for which an emergency budget has been adopted, the county treasurer shall determine the amount of the cash balance that is available to finance the emergency budget's outstanding warrants or registered warrants for each fund included on the emergency budget. The available amount of the cash balance of each fund must be determined by deducting from the county treasurer's year-end cash balance for the fund the outstanding warrants or registered warrants issued under the regularly adopted final budget for the fund and the cash reserve for the fund that the trustees have established, within the limitations of law, for the following fiscal year.

(2) The county treasurer shall prepare and deliver a statement on the financial status of each fund included on an emergency budget for a district that had an emergency budget during the preceding year to the board of county commissioners by the first Monday in August. The statement for each district emergency budget must include:

(a) the total amount of emergency warrants that are outstanding or registered against each fund of the district;

(b) the amount of the cash balance in each fund included on the emergency budget that is available to finance the outstanding warrants or registered warrants; and

(c) after consideration of the available money in subsection (2)(b), the additional amount of money that is required to finance the outstanding warrants or registered warrants and interest on the warrants and that must be raised by a tax levy.

(3) For each fund of the emergency budget of each district requiring a tax levy as established by subsection (2)(c), the board of county commissioners

shall, at the time all other district and county taxes are fixed and levied, levy a tax on the taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer.

History: **En. Sec. 54, Ch. 767, L. 1991.**

Part 4
Relationship to Other Laws

Part Cross-References

Pupil immunization requirements, Title 20, ch. 5, part 4.

20-15-401. Purpose. It is the purpose of this chapter to establish the governance of community college districts in Montana. The legislature intends that the board of regents and the local boards of trustees of community college districts coordinate their responsibilities to insure an orderly development of educational services to the citizens of Montana in accordance with this chapter.

History: **En. Sec. 1, Ch. 392, L. 1979.**

20-15-402. Precedence of community college chapter. Unless specifically identified in any other sections of the school laws prescribed in this title, community college districts are governed by the provisions of this chapter. Should there be a conflict between other requirements of this title and the provisions of this chapter regulating community college districts, the provisions of this chapter shall govern.

History: **En. Sec. 2, Ch. 392, L. 1979.**

20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district.

History: **En. Sec. 12, Ch. 392, L. 1979; amd. Sec. 6, Ch. 495, L. 1981; amd. Sec. 2, Ch. 570, L. 1981; amd. Sec. 76, Ch. 575, L. 1981; amd. Sec. 27, Ch. 465, L. 1983; amd. Sec. 6, Ch. 15, L. 1985; amd. Sec. 72, Ch. 370, L. 1987; amd. Sec. 5, Ch. 512, L. 1987; amd. Sec. 58, Ch. 587, L. 1987; amd. Sec. 14, Ch. 10, Sp. L. July 1992; amd. Sec. 43, Ch. 525, L. 1993; amd. Sec. 8, Ch. 539, L. 1993.**

Compiler's Comments

1993 Amendments: Chapter 525 in (1), after "15-70-301", deleted "15-70-322". Amendment effective January 1, 1994.

Chapter 539 in (1) substituted "15-16-605" for "15-16-601".

20-15-404. Trustees to adhere to certain other laws. Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

(1) the teachers' retirement provisions of Title 19, chapter 20;

(2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;

(3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;

(4) the adult education provisions of 20-7-701 through 20-7-713;

(5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221 through 20-9-224, and 20-9-512;

(6) the school bond provisions of 20-9-401 through 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465;

(7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;

(8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;

(9) the school elections provisions of Title 20, chapter 20;

(10) the students' rights provisions of 20-25-511 through 20-25-516; and

(11) the health provisions of 50-1-206.

History: En. Sec. 13, Ch. 392, L. 1979; amd. Sec. 7, Ch. 495, L. 1981; amd. Sec. 1, Ch. 270, L. 1983; amd. Sec. 73, Ch. 370, L. 1987; amd. Sec. 2, Ch. 488, L. 1989; amd. Sec. 49, Ch. 767, L. 1991.

CHAPTER 16

VOCATIONAL-TECHNICAL CENTER SYSTEM

Part 1 — General Provisions

20-16-101. Powers and duties of board of regents.
20-16-102. Sole state agency for federal vocational education requirements.
20-16-103. Duties of the deputy commissioner of vocational-technical center education.
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Part 2 — Finance

20-16-201. State treasurer custodian of vocational education money.
20-16-202. Sources of financing for vocational-technical center budgets — distribution of funds.
20-16-203. Source of financing for vocational-technical center facility maintenance.
20-16-204. Vocational-technical center funding — nongeneral fund money expended first — reversion of general fund money.
20-16-205. Tuition rates.
20-16-206. Student fees and disposition of collected fees.
20-16-207. Additional levy by school district — procedure.

Part 1
General Provisions

Part Cross-References

Pupil immunization requirements, Title 20, ch. 5, part 4.

20-16-101. Powers and duties of board of regents. The board of regents has general administrative and supervisory control over vocational-technical center education and shall:

(1) establish and when necessary amend a plan for the orderly development of vocational-technical center education that is consistent with federal and state law, controlled to prevent unnecessary duplication, and funded to ensure necessary growth and quality education;

(2) adopt standards for courses and programs;

(3) implement a review process for establishing and deleting programs and courses that recognizes the present and future needs of employers and provides qualified graduates for positions for which there is or may in the near future be a demand;

(4) establish student entrance and graduation requirements;

(5) appoint a director, to serve at the pleasure of the board, for each vocational-technical center and establish minimum qualifications for faculty, directors, administrative staff, and other personnel;

(6) appoint a deputy commissioner of vocational-technical center education, to serve at the pleasure of the board;

(7) establish student tuition and prescribe the bases and limitations for charging of fees, taking into account funding available from all other sources and the provisions of 20-16-205;

(8) determine the amount to be paid for the lease of buildings;

(9) adopt budget requests for the vocational-technical center education system;

(10) establish a procedure by which students can receive part of their education and training through programs, courses, and on-the-job training offered by the private sector and not available at the centers;

(11) establish a procedure by which qualified persons in the private sector can participate in the training and teaching of students in the centers' classrooms when such persons have training, knowledge, and skills not available through the centers' faculty;

(12) provide means by which the centers' faculty can obtain advanced education and training in new areas and either be reimbursed for their expenses or raised to a higher salary level, or both;

(13) establish for the various centers uniform policies for recordkeeping; financial transactions; accounting; maintenance; recruiting, guidance, and placement of students; examinations; personnel relations; and other matters as determined by the board;

(14) negotiate with the bargaining representative for personnel of each center or the personnel of the center system in a manner consistent with state and federal law;

(15) work with other institutions of higher education to implement the transfer of course credits between those institutions and the vocational-technical centers; and

(16) adopt rules and procedures to implement this section and to carry out any other powers and duties of the board.

History: **En. Sec. 1, Ch. 658, L. 1987.**

20-16-102. Sole state agency for federal vocational education requirements. (1) The board of regents is the sole state agency for purposes of the 1984 federal Carl D. Perkins Vocational Education Act, as may be amended, which requires a state participating in programs under that act to designate a state board or agency as the sole state agency responsible for administration or supervision of the administration of those programs.

(2) The board of regents shall contract with the superintendent of public instruction for the administration and supervision of K-12 vocational education programs, services, and activities allowed by the 1984 federal Carl D. Perkins Vocational Education Act, as may be amended, and in concert with the state plan for vocational education required by the federal act. The board of regents may contract with other agencies for the administration and supervision of other vocational education programs, services, and activities that receive funding allowed by the 1984 federal Carl D. Perkins Vocational Education Act, as may be amended.

History: **En. Sec. 2, Ch. 658, L. 1987.**

20-16-103. Duties of the deputy commissioner of vocational-technical center education. The deputy commissioner of vocational-technical center education shall, under the rules and policies of the board of regents:

(1) be the chief administrative officer for the board of regents for the administration of its vocational-technical center rules and policies;

(2) employ, within the limits of any legislative appropriation and with the confirmation of the board of regents, the staff necessary for the state supervision and administration of the board's vocational-technical center rules and policies;

(3) provide supervisory and consultative assistance to centers;

(4) report the status of vocational-technical center education in Montana when requested by the board of regents; and

(5) perform any other duties assigned by the board of regents.

History: **En. Sec. 4, Ch. 658, L. 1987.**

20-16-104. Local administration of vocational-technical center. (1) Subject to the requirements of the laws of the state of Montana and the policies and rules of the board of regents, the director of a vocational-technical center has administrative and supervisory control of the center and shall:

(a) employ personnel for the vocational-technical center according to the policies and rules of the board of regents;

(b) develop and submit a recommended budget for the vocational-technical center;

(c) collect student tuition and fees;

(d) recommend to the board of regents:

(i) proposals regarding vocational-technical center programs, budgets, student services, and public service activities; and

(ii) campus development and program plans for individual vocational-technical center buildings;

(e) manage buildings at the vocational-technical center;

(f) receive and administer gifts and bequests to the vocational-technical center according to a written plan submitted to the board of regents; and

(g) perform any other duties not inconsistent with law and required by the board of regents.

(2) The director of a vocational-technical center may not enter into any contract that in any way creates a debt or obligation upon the state for the improvement or construction of vocational-technical center buildings.

History: En. 75-7710 by Sec. 413, Ch. 5, L. 1971; (amd. Sec. 11, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 11, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7710; amd. Sec. 3, Ch. 598, L. 1979; amd. Sec. 15, Ch. 658, L. 1987; Sec. 20-7-312, MCA 1985; redes. 20-16-104 by Sec. 33, Ch. 658, L. 1987.

20-16-105. Local advisory boards. The board of trustees of a school district in which a vocational-technical center is located shall appoint a local advisory board, composed of at least five residents of the county where the center is located, to act in an advisory capacity to the center and the board of regents.

History: En. Sec. 3, Ch. 658, L. 1987.

20-16-106. Vocational-technical center designation. (1) Vocational-technical centers shall be designated by the board of regents upon direction of the legislature.

(2) The board of regents shall recognize the vocational-technical centers designated prior to July 1, 1987, in school district number 1 of Silver Bow County, high school district number 1 of Lewis and Clark County, high school district "A" of Cascade County, Missoula County high school, and high school district number 2 of Yellowstone County.

History: En. 75-7707 by Sec. 410, Ch. 5, L. 1971; (amd. Sec. 8, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 8, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7707; amd. Sec. 14, Ch. 598, L. 1979; amd. Sec. 14, Ch. 658, L. 1987; Sec. 20-7-311, MCA 1985; redes. 20-16-106 by Sec. 33, Ch. 658, L. 1987.

Cross-References

Definition of various schools, 20-6-501.

Joint district construction and ownership of vocational-technical center, 20-9-404, 20-9-405.

Vocational-technical center highway signs — location — specifications, 60-2-216.

20-16-107. Existing center employees. (1) The rights of persons employed by a vocational-technical center under a collective bargaining agreement in effect during the period from July 1, 1987, to July 1, 1989, may not be impaired, and they may, at any time prior to July 1, 1989, exercise any right they have under a collective bargaining agreement to transfer to another position within the school district.

(2) A person employed by a center under a school district on June 30, 1989, becomes an employee of the board of regents on July 1, 1989.

(3) Following July 1, 1987, the employees of any center or the board of regents may apply to the board of personnel appeals for determination of the appropriate bargaining unit or units for the purposes of collective bargaining for a contract or contracts to be negotiated with the board of regents prior to July 1, 1989.

(4) If a person is employed by a center in any capacity on July 1, 1989, and has accumulated sick, vacation, or other leave and years of service with a school district, such leave and years of service shall be transferred fully regardless of the length of employment with the district in which the center is located.

History: En. Sec. 5, Ch. 658, L. 1987.

20-16-108. Lease or purchase of property for vocational-technical center purposes. (1) The state of Montana, acting through the board of regents, may lease, for a term not to exceed 40 years, any building or lands for a vocational-technical center.

(2) The state of Montana, acting through the board of regents and on demand of a school district, shall lease or purchase the equity or interest of the school district in any building, land, or other property at a vocational-technical center on terms agreed to between the board of regents and the school district. A purchase may be by lump-sum payment, time payments, the assumption of bonded indebtedness, or any other mutually agreeable method. Money received by a school district from the lease or sale under this subsection (2) of the school district's equity or interest in a building, land, or other property must be credited to the debt service fund, building fund, general fund, or any combination of these funds, at the discretion of the trustees of the school district.

History: En. 75-7715 by Sec. 418, Ch. 5, L. 1971; R.C.M. 1947, 75-7715; amd. Sec. 15, Ch. 598, L. 1979; amd. Sec. 16, Ch. 658, L. 1987; Sec. 20-7-314, MCA 1985; redes. 20-16-108 by Sec. 33, Ch. 658, L. 1987.

Cross-References

Sale of county property to school district, 7-8-2216.

Leasing district property and disposition of any rentals, 20-6-607.

Selection of school sites, approval election, and lease of state lands, 20-6-621.

Authorization to lease buildings or land for school purposes, 20-6-625.

Additional levy for acquisition of land and school facilities, 20-9-353.

Joint district construction and ownership of vocational-technical center, 20-9-404, 20-9-405.

20-16-109. Vocational-technical center equipment. The equipment of a vocational-technical center designated prior to July 1, 1987, may not be transferred from the center for 2 years without consent of the school district board of trustees that operated the center prior to July 1, 1987.

History: En. Sec. 28, Ch. 658, L. 1987.

Part 2
Finance

20-16-201. State treasurer custodian of vocational education money. (1) The treasurer of the state of Montana is hereby designated as the custodian of all federal and state money designated, appropriated, or apportioned for vocational education. All money received from any federal or state source for the establishment, operation, or furtherance of vocational education in the state shall be deposited with the state treasurer. At the direction of the superintendent of public instruction, he shall disburse all money received for K-12 vocational education. At the direction of the board of regents, he shall disburse all money received for vocational-technical education and for vocational education other than K-12 vocational education.

(2) The state treasurer is the treasurer for all vocational-technical centers, and all money received by vocational-technical centers from any source shall be deposited in the state treasury pursuant to 17-6-105, unless the source of the money specifies deposit somewhere other than in the state treasury.

History: En. 75-7706 by Sec. 409, Ch. 5, L. 1971; (amd. Sec. 6, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 6, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7706; amd. Sec. 16, Ch. 598, L. 1979; amd. Sec. 2, Ch. 682, L. 1979; amd. Sec. 17, Ch. 658, L. 1987; Sec. 20-7-322, MCA 1985; redes. 20-16-201 by Sec. 33, Ch. 658, L. 1987.

20-16-202. Sources of financing for vocational-technical center budgets — distribution of funds. (1) The total of the budgets approved by the board of regents shall constitute the total maximum approved statewide vocational-technical center system budget which shall be financed as follows:

(a) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing vocational-technical education in Montana.

(b) The board of county commissioners of each county in which a designated vocational-technical center is located shall levy a tax in each calendar year of 1 ½ mills on the dollar of all taxable property, real and personal, within the county to raise the amount appropriated by the legislature for the support and maintenance of the vocational-technical center system. The tax is to be effective for property tax years beginning on or after January 1, 1987. It is the intent of this subsection (1)(b) that the county commissioners shall levy this tax for fiscal year 1988 operation of the vocational-technical system and thereafter.

(c) Designated vocational-technical centers shall be eligible to receive such funds from the federal government as the board of regents may provide pursuant to applicable acts of congress.

(2) The board of regents shall direct the distribution of the funds specified in subsection (1) on the basis of the budgets approved by the board of regents. The funds earned by the mill levy specified in subsection (1)(b) shall be credited to the vocational-technical center account in the unrestricted subfund of the current fund in the state treasury.

History: En. 75-7709 by Sec. 412, Ch. 5, L. 1971; amd. Sec. 1, Ch. 226, L. 1973; (amd. Sec. 10, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 10, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 26, Ch. 266, L. 1977; R.C.M. 1947, 75-7709; amd. Sec. 4, Ch. 598, L. 1979; amd. Sec. 1, Ch. 27, Sp. L. June 1986; amd. Sec. 18, Ch. 658, L. 1987; Sec. 20-7-324, MCA 1985; redes. 20-16-202 by Sec. 33, Ch. 658, L. 1987.

Cross-References

Limit on expenditures, 17-8-103.

Power to accept gifts, 20-6-601.

Contracts and bonds for joint construction of vocational-technical centers, 20-9-404.

20-16-203. Source of financing for vocational-technical center facility maintenance. The source of funds for maintenance, remodeling, and renovation of vocational-technical center facilities may be either federal funds or state funds specifically appropriated by the legislature and approved by the board of regents, or any combination of these funds.

History: En. Sec. 6, Ch. 598, L. 1979; amd. Sec. 20, Ch. 658, L. 1987; Sec. 20-7-327, MCA 1985; redes. 20-16-203 by Sec. 33, Ch. 658, L. 1987.

Cross-References

Appropriation bills, Art. V, sec. 11, Mont. Const.

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Contracts and bonds for joint construction of vocational-technical secondary schools, 20-9-404.

20-16-204. Vocational-technical center funding — nongeneral fund money expended first — reversion of general fund money. (1) The board of regents shall request the establishment of the appropriate accounts for the vocational-technical center system in the state treasury. These accounts shall be established in the appropriate state treasury funds as determined by the department of administration. All money prescribed and received under the provisions of 20-16-202 shall be credited to these accounts. The expenditure of the money deposited in the state treasury shall be made in accordance with procedures established by the department of administration. Such expenditures shall be made under the budget and for the programs approved by the board of regents under the financial administration provisions of this title.

(2) A vocational-technical center shall apply expenditures against nongeneral fund money wherever possible before using state general fund appropriations. All state general fund money appropriated or disbursed to a vocational-technical center which are unexpended at fiscal yearend shall revert to the state general fund.

History: En. 75-7208 by Sec. 347, Ch. 5, L. 1971; R.C.M. 1947, 75-7208; amd. Sec. 1, Ch. 205, L. 1979; amd. Sec. 18, Ch. 598, L. 1979; amd. Sec. 3, Ch. 682, L. 1979; amd. Sec. 19, Ch. 658, L. 1987; Sec. 20-7-325, MCA 1985; redes. 20-16-204 by Sec. 33, Ch. 658, L. 1987.

Cross-References

Disposal of unexpended appropriations, 17-7-304.

Contracts and bonds for joint construction of vocational-technical centers, 20-9-404.

20-16-205. Tuition rates. (1) Tuition may be charged to any resident or nonresident of the state of Montana by the director of any vocational-technical center at rates to be determined by the board of regents and the provisions of subsection (3). The board of regents shall prescribe permissible uses for any tuition authorized.

(2) For the purposes of this section the eligibility of a student for resident status shall be determined in the same manner as that prescribed for use by the Montana university system, except that those provisions referring to "high school graduates" or "graduation from high school" shall be considered to refer to a person who has attended school or who was in attendance at a school.

(3) If an additional levy for a center is approved under 20-16-207, the board of regents may charge an additional tuition amount not to exceed $40 a quarter to a student at the center who is a resident of Montana but who is not a property taxpayer of the county or an owner of a vehicle registered within the county where the center is located.

History: En. 75-7713 by Sec. 416, Ch. 5, L. 1971; R.C.M. 1947, 75-7713; amd. Sec. 1, Ch. 223, L. 1979; amd. Sec. 19, Ch. 598, L. 1979; amd. Sec. 21, Ch. 658, L. 1987; Sec. 20-7-332, MCA 1985; redes. 20-16-205 by Sec. 33, Ch. 658, L. 1987.

Cross-References

Charges for tuition — waivers, 20-25-421.

Definition of resident student, 20-25-501.

Presumptions and rules as to domicile, 20-25-503.

Evidence of domiciliary intent, 20-25-504.

20-16-206. Student fees and disposition of collected fees. (1) Fees for the use of equipment and material used in instruction may be charged by the director of the vocational-technical center. The board of regents shall prescribe the bases and limitations for the charging of such fees.

(2) Fees collected by the vocational-technical center shall be deposited with the state treasurer.

History: En. 75-7714 by Sec. 417, Ch. 5, L. 1971; R.C.M. 1947, 75-7714; amd. Sec. 20, Ch. 598, L. 1979; amd. Sec. 4, Ch. 682, L. 1979; amd. Sec. 22, Ch. 658, L. 1987; Sec. 20-7-333, MCA 1985; redes. 20-16-206 by Sec. 33, Ch. 658, L. 1987; amd. Sec. 1, Ch. 47, L. 1989.

Cross-References

Charges for tuition — waivers, 20-25-421.

20-16-207. Additional levy by school district — procedure. (1) For school fiscal years 1988 and 1989, the trustees of a school district that operated a vocational-technical center prior to July 1, 1987, may propose to the board of regents that a budget for salaries, benefits, operations, and equipment be adopted for the center in excess of the amount appropriated by the legislature.

(2) If the board of regents approves of a budget for a center in excess of the appropriated amount, the trustees of the district that operated the center shall submit to the qualified electors of the district, pursuant to 20-20-301 and in the manner prescribed by 20-9-353, a proposition for an additional levy for the additional funding. When the proposition is presented to the electorate, the proposition must be presented as a separate issue on the ballot.

(3) If a proposition for an additional levy for a vocational-technical center is approved by the electorate, the board of regents shall request the establishment of an individual account for the center in the state treasury as determined by the department of administration. The funds in each center account are appropriated for approved expenditures for the center. After July 1, 1989, any unexpended funding in a center account must be returned to the school district that requested the additional funding.

(4) For school fiscal year 1988, if the trustees of a school district that operated a vocational-technical center prior to July 1, 1987, have adopted a budget in excess of that appropriated by the legislature and have submitted the proposition for an additional levy to the qualified electors of the district and if the electors have approved the proposition as provided for in former 20-7-326, the trustees need not submit the proposition to the electors at an additional election following approval of the budget by the board of regents as provided for in subsection (2).

History: En. Sec. 27, Ch. 658, L. 1987.

CHAPTERS 17 THROUGH 19

RESERVED

CHAPTER 20

SCHOOL ELECTIONS

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20-20-105. Regular school election day and special school elections.
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20-20-311. Closure of registration.
20-20-312. Listing of registered electors.
20-20-313. Delivery and charge for lists of registered electors.

Part 4 — Election Procedure

20-20-401. Trustees' election duties — ballot certification.
20-20-402. Clerk of election judges and appointment for absent judge.
20-20-403 through 20-20-409 reserved.
20-20-410. Oath of judges.
20-20-411. Conduct of election.
20-20-412 through 20-20-414. Repealed.
20-20-415. Trustees to canvass votes.
20-20-416. Certificate of election.
20-20-417. Request for county election administrator to conduct election.
20-20-418 through 20-20-420 reserved.
20-20-421. Voting machines and electronic voting systems.

Chapter Cross-References

General election provision, Title 13, ch. 1.

Registration of electors, Title 13, ch. 2.

Voting machines, Title 13, ch. 17.

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Control of campaign practices, Title 13, ch. 37.

Bribery in official and political matters, 45-7-101.

Threats and other improper influence in official and political matters, 45-7-102.

Exemption of electors from arrest, 46-6-102.

Basic political rights, Title 49, ch. 1, part 2.

Part 1
General Provisions

20-20-101. Definition. As used in this title, unless the context clearly indicates otherwise, "school election" means any election conducted by a district or community college district for the purpose of electing trustees, for authorizing taxation, for authorizing the issuance of bonds by an elementary district or a high school district, or for accepting or rejecting any proposition that may be presented to the electorate for decision in accordance with the provisions of this title.

History: En. 75-6401 by Sec. 137, Ch. 5, L. 1971; R.C.M. 1947, 75-6401.

Cross-References

Election of trustees, 20-3-301.

District consolidation, 20-6-203.

Consolidation or annexation election with assumption of bonded indebtedness, 20-6-206.

Consolidation or annexation election without assumption of bonded indebtedness, 20-6-207.

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Election for transfer of bus depreciation reserve, 20-10-147.

Community college district organization election, 20-15-203, 20-15-208.

Election of trustees after organization of community college district, 20-15-221.

Annexation of territory of districts to community college district, 20-15-231.

20-20-102. Precedence of school election provisions. Except as otherwise provided in this title, school elections shall be conducted and canvassed and the results shall be returned in the same manner as provided for general elections in Title 13. Should there be a conflict between the requirements of Title 13 and the provisions of this title regulating school elections, the provisions of this title shall govern. The superintendent of public instruction may make any necessary rules to clarify Title 13 provisions for use in school elections.

History: En. 75-6402 by Sec. 138, Ch. 5, L. 1971; R.C.M. 1947, 75-6402; amd. Sec. 355, Ch. 571, L. 1979.

20-20-103. Election by ballot. All school elections shall be by ballot.

History: En. 75-6403 by Sec. 139, Ch. 5, L. 1971; R.C.M. 1947, 75-6403.

Cross-References

Mail ballot elections prohibited, 13-19-104.

20-20-104. Forms. The forms necessary for school district elections shall be the same as those prescribed by law or the secretary of state. The superintendent of public instruction may issue prescribed forms for school elections with any necessary revisions of prescribed or statutory forms.

History: En. Sec. 120, Ch. 368, L. 1969; R.C.M. 1947, 23-3702; amd. Sec. 356, Ch. 571, L. 1979.

20-20-105. Regular school election day and special school elections. The first Tuesday of April of each year shall be the regular school election day. Unless otherwise provided by law, special school elections may be conducted at such times as determined by the trustees.

History: En. 75-6404 by Sec. 140, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1974; R.C.M. 1947, 75-6404; amd. Sec. 8, Ch. 644, L. 1987.

Cross-References

Annual election, 20-3-304.

20-20-106. Poll hours. (1) The polls for any school election in any district shall open not later than noon. The trustees may order the polls to open earlier, but no earlier than 7 a.m.

(2) If the school election is held on the same day as an election held by a political subdivision under 13-1-104(3) and at the same polling place, the polls shall be opened and closed at the times required for the school election.

(3) If the school election is held on the same day as a general or primary election, the polls shall be opened and closed at the times required for the general or primary election.

(4) Once opened, the polls shall be kept open continuously until 8 p.m., except that whenever all the registered electors at any poll have voted, the poll shall be closed immediately.

History: En. 75-6405 by Sec. 141, Ch. 5, L. 1971; R.C.M. 1947, 75-6405; amd. Sec. 357, Ch. 571, L. 1979; amd. Sec. 2, Ch. 57, L. 1985; amd. Sec. 2, Ch. 372, L. 1987.

Cross-References

Time of opening and closing of polls for all elections, 13-1-106.

20-20-107. Election expenses. All expenses necessarily incurred in the matter of holding school elections shall be paid out of the school funds of the district, except when such expenses are by law to be shared by a community college district for which the district is conducting an election. The trustees may pay the election judges of a school election at a rate not to exceed the prevailing federal minimum wage per hour of service in connection with such election.

History: En. 75-6420 by Sec. 156, Ch. 5, L. 1971; R.C.M. 1947, 75-6420.

Cross-References

Conduct of community college elections, 20-15-208.

Trustee election upon order of trustees, 20-15-221.

20-20-108. Rescheduling of school election canceled due to declaration of state of emergency or disaster. If the governor declares a state of emergency or disaster under Title 10, chapter 3, a school election may be canceled by the county superintendent of schools or, in the absence of the county superintendent, by the state superintendent of public instruction. As soon as convenient after the declaration of a state of emergency or disaster is terminated, the trustees of the district shall set a new date for the election. Notice of such election shall be published for 7 consecutive days in a newspaper of general circulation in the district and posted for 7 days at district polling places. Whenever the best interests of the district would be served, the trustees may give additional notice of the election through appropriate radio and television stations that serve the people of the district.

History: En. Sec. 1, Ch. 153, L. 1981.

Part 2
Calling of and Preparation for School Elections

20-20-201. Calling of school election. (1) At least 40 days before any school election, the trustees of any district shall call such school election by resolution, stating the date and purpose of such election, and shall conduct it in accordance with the procedures required by law, when:

(a) an election must be held on the regular school election day;

(b) in their discretion, the trustees order an election for a purpose authorized by law;

(c) the county superintendent orders an election in accordance with the law authorizing such an order;

(d) the board of public education orders an election in accordance with the law authorizing such an order;

(e) the county commissioners order an election in accordance with the law authorizing such an order;

(f) the board of trustees of a community college district orders an election in accordance with the law authorizing such an order (in which case the community college district shall bear its share of the cost of such election); or

(g) a school election is required by law under any other circumstances.

(2) The resolution calling any school election shall be transmitted to the county election administrator no later than 35 days before the election in order to enable him to close the registration and prepare the lists of registered electors as required by school election laws.

History: En. 75-6406 by Sec. 142, Ch. 5, L. 1971; R.C.M. 1947, 75-6406; amd. Sec. 358, Ch. 571, L. 1979.

Cross-References

Election administrator, 13-1-301.

Mail ballot elections prohibited, 13-19-104.

Conduct of elections, 20-3-306.

District consolidation, 20-6-203.

Elementary district annexation, 20-6-205.

Joint elementary district dissolution, 20-6-211.

County high school unification, 20-6-312.

Opening a junior high school when high school district operates a county high school, 20-6-505.

Trustees' authority to acquire and dispose of sites and buildings, 20-6-603.

Selection of school sites, approval election, and lease of state lands, 20-6-621.

Election to authorize issuance of school district bonds, 20-9-421.

Purpose and authorization of a building reserve fund by an election, 20-9-502.

Joint interstate school agreements, 20-9-705.

Duties of County Transportation Committee, 20-10-132.

20-20-202. Time limitation for conduct of election. Whenever the trustees of any district receive an order to call an election, they shall conduct such election any time within 60 days after the date of the order unless the law or order otherwise regulates the day or timing of such election.

History: En. 75-6407 by Sec. 143, Ch. 5, L. 1971; R.C.M. 1947, 75-6407.

20-20-203. Resolution for poll hours, polling places, and judges. (1) At the trustee meeting when a school election is called, the trustees shall:

(a) except as provided in 20-20-106(3), establish the time at which the polls are to open if in their discretion they determine that the polls shall be open before noon;

(b) establish the polling places for such election, using the established polling places for general elections within the district wherever possible;

(c) appoint, from among the qualified electors of the district, at least three judges for each polling place for such election and notify each judge of such appointment not less than 10 days before the election.

(2) There shall be one polling place in each district unless the trustees establish additional polling places. If more than one polling place is established, the trustees shall define the boundaries for each polling place, and such trustee-defined polling place boundaries shall be coterminous with county precinct boundaries existing within a district. If the site of a polling place is changed from the polling place site used for the last preceding school election, special reference to the changed site of the polling place shall be included in the notice for such election.

History: En. 75-6408 by Sec. 144, Ch. 5, L. 1971; R.C.M. 1947, 75-6408; amd. Sec. 359, Ch. 571, L. 1979; amd. Sec. 3, Ch. 57, L. 1985.

Cross-References

Election precincts, Title 13, ch. 3.

Designation of polling place, 13-3-105.

Election judges, Title 13, ch. 4.

20-20-204. Election notice. (1) (a) When the trustees of any district call a school election, they shall give notice of the election not less than 20 days or more than 30 days before the day of the election by:

(i) publication of the notice in a newspaper of general circulation in the district; or

(ii) posting notices in three public places in the district, provided that in incorporated cities and towns at least one notice shall be posted at a public place in each ward or precinct.

(b) Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication of the school election notice in a radio or television broadcast, the trustees may cause such notification to be made.

(2) The notice of a school election, unless otherwise required by law, shall specify:

(a) the date and polling places of the election;

(b) the hours the polling places will be open;

(c) each proposition to be considered by the electorate;

(d) if there are trustees to be elected, the number of positions subject to election and the length of term of each position; and

(e) where and how absentee ballots may be obtained.

(3) If more than one proposition is to be considered at the same school election, each proposition must be set apart and separately identified in the same notice or published in separate notices.

History: En. 75-6409 by Sec. 145, Ch. 5, L. 1971; R.C.M. 1947, 75-6409; amd. Sec. 360, Ch. 571, L. 1979; amd. Sec. 3, Ch. 372, L. 1987.

Cross-References

Supplemental publication of notice by radio or television, 2-3-105 through 2-3-107.

Notice of school bond election by separate purpose, 20-9-427.

Part 3
Qualification and Registration of Electors

20-20-301. Qualifications of elector. An individual is entitled to vote at school elections if he has the qualifications set forth in 13-1-111 and is a resident of the school district or, in a school district that has been apportioned into single-member trustee districts according to 20-3-337, a resident of the trustee district.

History: En. 75-6410 by Sec. 146, Ch. 5, L. 1971; amd. Sec. 2, Ch. 83, L. 1971; amd. Sec. 1, Ch. 118, L. 1971; amd. Sec. 4, Ch. 91, L. 1973; amd. Sec. 31, Ch. 100, L. 1973; amd. Sec. 10, Ch. 266, L. 1977; R.C.M. 1947, 75-6410; amd. Sec. 361, Ch. 571, L. 1979; amd. Sec. 6, Ch. 539, L. 1987.

Cross-References

Qualifications of electors, Art. IV, sec. 2, Mont. Const.

Rules for determining residence, 1-1-215, 13-1-112, 13-1-113.

20-20-302. Repealed. Sec. 1, Ch. 208, L. 1983.

History: En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; re-en. Sec. 5199.1, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1959; R.C.M. 1947, 84-4711(part).

20-20-303. Elector challenges. (1) An elector may challenge the qualifications of another elector under the provisions of 13-2-404 and 13-13-301(1). Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in 13-13-301(2). The challenge shall be determined in the same manner, using the same oath as provided in Title 13, chapter 13, part 3.

(2) Any person who has been challenged under any of the provisions of this section and who swears or affirms falsely before any school election judge is guilty of false swearing and is punishable as provided in 45-7-202.

History: En. 75-6412 by Sec. 148, Ch. 5, L. 1971; amd. Sec. 3, Ch. 83, L. 1971; amd. Sec. 5, Ch. 91, L. 1973; amd. Sec. 11, Ch. 266, L. 1977; R.C.M. 1947, 75-6412.

20-20-304 through 20-20-310 reserved.

20-20-311. Closure of registration. Registration for school elections shall close for 30 days before any school election, but it shall not be necessary to publish any notice of such closing of registration.

History: En. 75-6413 by Sec. 149, Ch. 5, L. 1971; R.C.M. 1947, 75-6413.

Cross-References

Registration of electors, Title 13, ch. 2.

20-20-312. Listing of registered electors. After closing registration, the county election administrator shall prepare a list of registered electors for each polling place established by the trustees. The list for each polling place shall be prepared in the format of a precinct register book.

History: En. 75-6414 by Sec. 150, Ch. 5, L. 1971; amd. Sec. 4, Ch. 83, L. 1971; R.C.M. 1947, 75-6414; amd. Sec. 362, Ch. 571, L. 1979.

Cross-References

Local election administration, Title 13, ch. 1, part 3.

20-20-313. Delivery and charge for lists of registered electors. Before the day of the election, the election administrator shall deliver a certified copy of the lists of registered electors for each polling place to the district. The district shall deliver them to the election judges prior to the opening of the polls. The district shall reimburse the county for the actual costs of preparing the lists of registered electors.

History: En. 75-6415 by Sec. 151, Ch. 5, L. 1971; R.C.M. 1947, 75-6415; amd. Sec. 363, Ch. 571, L. 1979.

Cross-References

Local election administration, Title 13, ch. 1, part 3.

Part 4
Election Procedure

20-20-401. Trustees' election duties — ballot certification. (1) The trustees are the general supervisors of school elections unless the trustees request and the county election administrator agrees to conduct a school election under 20-20-417.

(2) Not less than 15 days before an election, the clerk of the district shall prepare a certified list of the names of all candidates entitled to be on the ballot and the official wording for each ballot issue. The clerk shall arrange for printing the ballots. Ballots for absentee voting must be printed and available at least 11 days prior to the election. Names of candidates on school election ballots need not be rotated.

(3) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election.

History: En. 75-6418 by Sec. 154, Ch. 5, L. 1971; R.C.M. 1947, 75-6418; amd. Sec. 364, Ch. 571, L. 1979; amd. Sec. 2, Ch. 481, L. 1983; amd. Sec. 4, Ch. 372, L. 1987.

Cross-References

Election judges, Title 13, ch. 4.

Election supplies and ballots, Title 13, ch. 12.

Oath of office, 20-1-202.

20-20-402. Clerk of election judges and appointment for absent judge. Before conducting the school election and on the day of the election, the judges shall designate one of their number to act as clerk of such election. If any of the judges appointed by the trustees are not present at the time for the opening of the poll, the electors present at that time may appoint a qualified elector for such election to act in the place of the absent judge.

History: En. 75-6419 by Sec. 155, Ch. 5, L. 1971; R.C.M. 1947, 75-6419.

Cross-References

Election judges, Title 13, ch. 4.

20-20-403 through 20-20-409 reserved.

20-20-410. Oath of judges. Before votes are cast, the school election judges shall take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

History: En. Sec. 5, Ch. 372, L. 1987.

20-20-411. Conduct of election. Election judges shall conduct school elections in a manner that ensures a fair and unbiased determination of the matters put before the electorate and see that each elector has an adequate opportunity to cast his vote.

History: En. 75-6421 by Sec. 157, Ch. 5, L. 1971; R.C.M. 1947, 75-6421; amd. Sec. 365, Ch. 571, L. 1979.

Cross-References

Election procedure, Title 13, ch. 13.

20-20-412 through 20-20-414. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

20-20-412. En. 75-6416 by Sec. 152, Ch. 5, L. 1971; R.C.M. 1947, 75-6416(part).

20-20-413. En. 75-6422 by Sec. 158, Ch. 5, L. 1971; R.C.M. 1947, 75-6422(1), (2).

20-20-414. En. 75-6422 by Sec. 158, Ch. 5, L. 1971; R.C.M. 1947, 75-6422(3) thru (6).

20-20-415. Trustees to canvass votes. At the first regular or special meeting of the trustees conducted after the receipt of the certified tally sheets of any school election from all the polls of the district, the trustees shall canvass the vote.

History: En. 75-6423 by Sec. 159, Ch. 5, L. 1971; R.C.M. 1947, 75-6423(part); amd. Sec. 366, Ch. 571, L. 1979.

Cross-References

Canvassing, returns, and certificates, Title 13, ch. 15.

Meetings and quorum, 20-3-322.

School bond elections — canvassing, 20-9-428.

20-20-416. Certificate of election. After the canvass of the total votes cast, the trustees shall issue a certificate of election. In the case of a trustee election, the certificate shall be issued to the elected trustee and the county superintendent designating the term of the trustee position to which he has been elected. In the case of an election on a proposition, the trustees shall issue a certificate specifying the outcome of the election. The certificate shall be issued to the official or public body which ordered the election within 15 days after the election. When the election has been ordered by resolution of the trustees, the canvassed results shall be published immediately in a newspaper that will give notice to the largest number of people of the district.

History: En. 75-6423 by Sec. 159, Ch. 5, L. 1971; R.C.M. 1947, 75-6423(part); amd. Sec. 367, Ch. 571, L. 1979.

Cross-References

Canvassing, returns, and certificates, Title 13, ch. 15.

Election of trustees, 20-3-301.

Qualification and oath of person receiving certificate, 20-3-307.

20-20-417. Request for county election administrator to conduct election. (1) By June 1 of each year, the trustees of any district may request the county election administrator to conduct certain school elections during the ensuing school fiscal year.

(2) Whenever the county election administrator agrees to conduct a school election, he shall:

(a) perform the duties imposed on the trustees and the clerk of the district for school elections in 20-20-203, 20-20-313, and 20-20-401;

(b) conduct the election in accordance with the provisions of Title 13, chapters 13 and 15; and

(c) deliver to the trustees, for the purpose of canvassing the vote, the certified tally sheets and other items as provided in 13-15-301.

(3) Whenever the trustees request the county election administrator to conduct a school election, the school district shall pay the costs of the election as provided in 13-1-302.

History: En. Sec. 1, Ch. 481, L. 1983.

Cross-References

County election administrator, 13-1-301.

20-20-418 through 20-20-420 reserved.

20-20-421. Voting machines and electronic voting systems. Whenever voting machines or electronic voting systems are available to a district, such voting devices may be used for a school election. Any district that uses a voting machine or an electronic voting system shall do so in accordance with the provisions of chapter 17 of Title 13. In construing the provisions of that chapter, the "county governing body" and the "election administrator" shall, for the purposes of this section, be considered to refer to trustees and "county" shall be considered to refer to district.

History: En. 75-6417 by Sec. 153, Ch. 5, L. 1971; R.C.M. 1947, 75-6417; amd. Sec. 368, Ch. 571, L. 1979; amd. Sec. 77, Ch. 575, L. 1981.

CHAPTERS 21 THROUGH 24

RESERVED

CHAPTER 25

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Chapter Cross-References

Educational goals and duties, Art. X, sec. 1, Mont. Const.

Board of Regents of Higher Education created, Art. X, sec. 9, Mont. Const.; 2-15-1505.

Part 1

University System — General

20-25-101. Antidiscrimination. The Montana university system shall instruct men and women on equal terms.

History: En. 75-8401 by Sec. 1, Ch. 2, L. 1971; R.C.M. 1947, 75-8401.

Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

20-25-102. Prohibition against use of name of system. (1) The state has the exclusive right to the name "the Montana university system".

(2) No other institution of learning or corporation may use the name "the Montana university system" or similar name.

(3) The attorney general shall bring an action in the name of the state against any person, association, or corporation using the same or similar name.

(4) The penalty for violation of this section shall be the dissolution of the corporation and a fine in a sum not exceeding $500 or less than $100.

History: En. 75-8404 by Sec. 4, Ch. 2, L. 1971; amd. Sec. 31, Ch. 266, L. 1977; R.C.M. 1947, 75-8404.

20-25-103. Authority to accept gifts. On behalf of the state, the regents may accept all gifts or grants of any kind for the use of any of the units of the university system. Gifts or grants subject to specific provisions shall be accepted and used subject to the terms of the gift or grant.

History: En. 75-8429 by Sec. 29, Ch. 2, L. 1971; R.C.M. 1947, 75-8429.

20-25-104. Supplementary conservation education in university system. (1) To supplement the broad conservation program in the elementary and secondary schools, the units of the university system shall make available to all students in teacher preparatory courses basic instruction in conservation education.

(2) The units at Bozeman and Missoula shall include instruction in conservation in their community or public service programs.

History: En. 75-8803 by Sec. 59, Ch. 2, L. 1971; R.C.M. 1947, 75-8803.

20-25-105. Repealed. Sec. 8, Ch. 21, L. 1985.

History: En. 75-8804 by Sec. 60, Ch. 2, L. 1971; R.C.M. 1947, 75-8804.

20-25-106. Repealed. Sec. 4, Ch. 428, L. 1983.

History: En. 75-8805 by Sec. 61, Ch. 2, L. 1971; R.C.M. 1947, 75-8805.

20-25-107. Regulation of award of degrees — penalty. (1) No person, corporation, association, or institution shall issue any degree or such similar literary honors as are usually granted by universities or colleges without the prior approval of the regents of the adequacy of the course of study.

(2) This section does not apply to any educational institution accredited by an educational accrediting association whose accrediting is found by the regents to be generally recognized by state and other universities in the United States.

(3) Violation of this section is a misdemeanor.

History: En. 75-8502 by Sec. 31, Ch. 2, L. 1971; R.C.M. 1947, 75-8502.

Cross-References

Penalty for violation of school laws, 20-1-207.

Community college not to grant baccalaureate degree, 20-15-108.

Penalty for misdemeanor when none specified, 46-18-212.

20-25-108. Research programs — powers of units. (1) The units of the system are authorized, singly or in cooperation, to engage in research and development programs with the prior approval of the regents.

(2) Such programs may be conducted by any department of a unit or any organization established to assist the unit. A unit or organization may:

(a) contract with private organizations, companies, firms, or individuals relative to research programs;

(b) conduct research programs with the penal, corrective, or custodial institutions of Montana and engage the voluntary participation of the inmates with the prior approval of the governing board of the institution;

(c) accept contributions, grants, or gifts from private organizations, companies, firms, individuals, governmental agencies or departments for research programs;

(d) make agreements or cooperative undertakings with private organizations, companies, firms, individuals, governmental agencies or departments for research programs;

(e) match the funds of private organizations, companies, firms, individuals, governmental agencies or departments with available funds for research programs;

(f) accumulate, invest, and expend the funds and proceeds from research programs;

(g) acquire real and personal property reasonably required for research programs;

(h) not divert funds, proceeds, or real and personal property from the research programs; and

(i) not charge or obligate the state of Montana or the general funds or a unit or agency.

(3) The legislature declares a public need for scientific research in the units of the system to promote the general welfare and to provide an adequate defense for the United States.

History: En. 75-8801 by Sec. 57, Ch. 2, L. 1971; amd. Sec. 10, Ch. 343, L. 1977; R.C.M. 1947, 75-8801.

Cross-References

Contracts and agreements for research by state agencies, 90-1-107.

Part 2

University Units

20-25-201. Units constituting university system. The Montana university system is composed of the following units, each designated by its legal name:

(1) University of Montana, located at Missoula;

(2) Montana state university, located at Bozeman;

(3) Montana college of mineral science and technology, located at Butte;

(4) Western Montana college of the university of Montana, located at Dillon;

(5) Eastern Montana college, located at Billings; and

(6) Northern Montana college, located at Havre.

History: **En. 75-8403 by Sec. 3, Ch. 2, L. 1971; R.C.M. 1947, 75-8403; amd. Sec. 1, Ch. 224, L. 1989.**

20-25-202 through 20-25-204 reserved.

20-25-205. Purpose of university — law and forestry schools. (1) The university of Montana shall have for its purpose instruction in all the departments of science, in literature, in the arts, and in industrial and professional education.

(2) A law school is established at the university of Montana.

(3) A forestry school is established at the university of Montana.

History: **En. 75-8405 by Sec. 5, Ch. 2, L. 1971; R.C.M. 1947, 75-8405.**

Cross-References

Administrative rules distributed to university law library, 2-4-313.

Supreme Court opinions distributed to university law library, 3-2-604.

Justices of the Peace orientation course to be held at law school, 3-10-203.

20-25-206. Departments and courses of the university of Montana. (1) The departments of the university are:

(a) a preparatory department, which may be dissolved as the regents deem wise, containing courses designed to prepare a student for the regular department;

(b) a department of literature, science, and the arts, offering courses which shall include:

(i) mathematics, physical and natural sciences, with their application to the industrial arts;

(ii) languages, literature, history, and philosophy; and

(iii) other courses at the regents' discretion; and

(c) professional and technical departments.

(2) When the income of the university allows and demands require, the courses may form departments with a faculty and an appropriate title.

History: **En. 75-8406 by Sec. 6, Ch. 2, L. 1971; R.C.M. 1947, 75-8406.**

20-25-207. Bureau of government research — purpose — funding. (1) There is a bureau of government research at the university of Montana. The purpose of the bureau is to facilitate research and publication in the area of state and local government and to maintain a liaison between political scientists and government officials through the exchange of information.

(2) The bureau of government research may:

(a) receive and administer gifts, donations, and bequests;

(b) contract with individuals, organizations, and governmental agencies for cooperative endeavors; and

(c) apply for and receive grants from public and private agencies.

History: **En. Sec. 2, Ch. 443, L. 1993.**

20-25-208 through 20-25-210 reserved.

20-25-211. Montana college of mineral science and technology — purpose — fees for assays. (1) The Montana college of mineral science and technology has for its purpose instruction and education in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics and drawing, and the laws of the United States and Montana relating to mining.

(2) A department designated as "the Montana state bureau of mines and geology", which shall be under the direction of the regents, is established at the college.

(3) The president of Montana college of mineral science and technology may charge and collect reasonable fees for any assays and analyses made by the college.

(4) The president shall keep an account of such fees and pay them monthly to the treasurer for deposit to the college fund.

History: En. Secs. 7, 49, Ch. 2, L. 1971; R.C.M. 1947, 75-8407, 75-8608.

20-25-212. Bureau of mines and geology — purpose. The bureau of mines and geology shall:

(1) compile and publish statistics relative to Montana geology, mining, milling, and metallurgy;

(2) collect:

(a) typical geological and mineral specimens;

(b) samples of products;

(c) photographs, models, and drawings of appliances used in the mines, mills, and smelters of Montana; and

(d) a library and a bibliography of literature relative to the progress of geology, mining, milling, and smelting in Montana;

(3) study the geological formations of Montana, with special reference to their economic mineral resources and ground water;

(4) examine the topography and physical features of Montana relative to their bearing upon the occupation of the people;

(5) study the mining, milling, and smelting in Montana relative to their improvement;

(6) publish bulletins and reports of a general and detailed description of the natural resources, geology, mines, mills, and reduction plants of Montana;

(7) make qualitative examinations of rocks and mineral samples;

(8) consider scientific and economic problems the regents consider valuable to the people of Montana;

(9) communicate special information of Montana geology, mining, and metallurgy;

(10) cooperate with:

(a) departments of the system;

(b) the state mine inspector;

(c) departments of the state;

(d) the United States geological survey; and

(e) the United States bureau of mines;

(11) make examinations of state land regarding its geology and mineral value at the request of the department of state lands and make investments. These services are limited to the time available for such work after all other duties of the bureau of mines and geology are served. Written reports shall be made. Travel expenses incurred by the examiner shall be paid as provided

for in 2-18-501 through 2-18-503, as amended, by the agency requesting the examination upon the presentation of claims in the ordinary form.

(12) deposit all material collected in the state museums or in the Montana college of mineral science and technology after completed use by the bureau of mines and geology;

(13) distribute duplicates of representative material to the units of the university system to their best educational advantage; and

(14) print the regular and special reports with illustrations and maps and distribute them on direction of the regents.

History: En. 75-8408 by Sec. 8, Ch. 2, L. 1971; amd. Sec. 17, Ch. 453, L. 1977; R.C.M. 1947, 75-8408.

Cross-References

Membership on Board of Water Well Contractors, 2-15-3307.

Testing of coal production, 15-35-106.

Drilling data available to bureau representative, 82-11-126.

20-25-213. Bureau director and assistants — duties. The director and assistants of the bureau of mines and geology shall:

(1) take an oath to perform all required services;

(2) guard all confidential information accumulated in their work;

(3) refrain from pecuniary speculation or remunerative private work based upon knowledge of a commercial or economic nature acquired through their services until the knowledge is published and submitted to the people of Montana; and

(4) turn in to the bureau of mines and geology, as state property, all correspondence, notes, illustrations, and other accumulated data.

History: En. 75-8409 by Sec. 9, Ch. 2, L. 1971; R.C.M. 1947, 75-8409.

Cross-References

Oath of office, 20-1-202.

20-25-214 through 20-25-220 reserved.

20-25-221. Montana state university — designation and purpose. (1) The land-grant university for the state of Montana, designated as "Montana state university", is established at Bozeman under the provisions of the Morrill Act of 1862.

(2) Montana state university shall be a comprehensive institution carrying out programs of research and public service and offering instruction in the sciences, literature, and arts, including military science, as well as professional programs in agriculture, engineering, and other fields as may be prescribed by the regents.

History: En. 75-8410 by Sec. 10, Ch. 2, L. 1971; R.C.M. 1947, 75-8410.

20-25-222. Agricultural experiment station — establishment and purpose. (1) There is established at the state university at Bozeman and under its direction an agricultural experiment station, by virtue of the Hatch Act approved by congress on March 2, 1887. The provisions, donations, and benefits contained in that act and all acts supplementary thereto or amendatory thereof are accepted and adopted by the state of Montana.

(2) The purpose of the agricultural experiment station shall be to conduct and promote studies, scientific investigations, and experiments relating to

agriculture, natural resources, and rural life and to diffuse information thereby acquired among the people of Montana.

(3) The agricultural experiment station shall include, in addition to the central location at Bozeman, the designated research centers and other affiliated testing and research facilities.

History: En. 75-8411 by Sec. 11, Ch. 2, L. 1971; amd. Sec. 1, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.

Cross-References

Experiment station defined, 20-1-101.

Advice to Department of Transportation regarding seeding, 60-2-208.

Duty of Department of Agriculture to cooperate with station, 80-1-102.

Funds for experiment station, 80-10-104.

20-25-223. Director of agricultural experiment station — duties. The director shall have the immediate direction, management, and control of the agricultural experiment station, subject to the general supervision, direction, and control of the regents and the president of the state university.

History: En. Sec. 3, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.1.

Cross-References

Membership appointment to Fertilizer Advisory Committee, 2-15-1516.

Duty to meet with Fertilizer Advisory Committee, 80-10-106.

20-25-224. Agricultural research centers. (1) The following agricultural research centers are established as a part of the agricultural experiment station:

(a) the central agricultural research center, located near Moccasin;

(b) the western agricultural research center, located near Corvallis;

(c) the northern agricultural research center, located near Havre;

(d) the southern agricultural research center, located near Huntley;

(e) the northwestern agricultural research center, located near Kalispell;

(f) the eastern agricultural research center, located near Sidney.

(2) All research centers shall be under the general supervision of the director of the agricultural experiment station.

History: En. Sec. 4, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.2.

20-25-225. Experimental farms. (1) In accordance with the provisions of the Morrill Act of July 2, 1862, the regents shall make available for the purchase of sites or experimental farms from any funds deposited in the Montana nonexpendable trust fund credited to the state university through provisions of the Morrill Land Act of 1862, known as the agricultural college Morrill permanent fund, a sum not to exceed 10% of the amount of such fund.

(2) The total amount which may be used for purchase of needed lands for sites or experimental farms may not exceed 10% in the aggregate of the total amount which has now or which may accrue to the credit of the agricultural college Morrill permanent trust fund.

(3) No portion of the moneys apportioned from the endowment funds for the purchase of sites or experimental farms shall be applied directly or indirectly to the purchase, erection, preservation, or repair of any building or buildings.

(4) The regents shall approve purchases of sites or experimental farms, which must be essential for the research programs of the state university.

History: En. 75-8606 by Sec. 47, Ch. 2, L. 1971; R.C.M. 1947, 75-8606; amd. Sec. 19, Ch. 281, L. 1983.

20-25-226. Assents to acts of congress. (1) (a) The state of Montana assents to the provisions of an act of congress entitled "An Act to Provide for an Increased Annual Appropriation for Agricultural Experiment Stations and Regulating the Expenditure Thereof", approved March 16, 1906, and consents to receive the benefits thereof in the manner and for the purposes intended and provided in the act.

(b) The agricultural experiment station shall be the beneficiary of the funds in the act and shall use the funds only for the purposes therein provided.

(c) The treasurer of Montana state university may receive all moneys appropriated by the act, to be expended under the supervision of the regents in the manner designated in the act, and shall receive, hold, and account for the funds and make reports to the secretary of agriculture as required by the act.

(2) (a) The state accepts and assents to the terms and provisions of the act of congress approved May 8, 1914, entitled "An Act to Provide for Cooperative Agricultural Extension Work Between the Agricultural Colleges in the Several States Receiving the Benefits of an Act of Congress Approved July Second, Eighteen Hundred and Sixty-two, and of Acts Supplementary Thereto, and the United States Department of Agriculture".

(b) The president of Montana state university may enter into all necessary agreements with the secretary of agriculture of the United States for the receipt and expenditure of all money paid under the provisions of said act.

(c) He may receive and expend such money in accordance with the provisions of said act and any agreements so made.

History: (1)Ap. p. Sec. 44, Ch. 2, L. 1971; Sec. 75-8603, R.C.M. 1947; Ap. p. Sec. 46, Ch. 2, L. 1971; amd. Sec. 9, Ch. 343, L. 1977; Sec. 75-8605, R.C.M. 1947; (2)En. Sec. 45, Ch. 2, L. 1971; Sec. 75-8604, R.C.M. 1947; R.C.M. 1947, 75-8603(1) thru (3), 75-8604, 75-8605(1)(b).

20-25-227. Montana wool laboratory — designation and purpose. (1) There is established as a part of the agricultural experiment station the Montana wool laboratory.

(2) The purpose of the laboratory shall be the carrying on of effective scientific and practical research and testing work to develop as complete and accurate a knowledge of wools as possible.

(3) The wool laboratory shall be under the general direction of the director of the agricultural experiment station.

History: En. Sec. 5, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.3.

20-25-228. Wool laboratory funds and fees. (1) The wool laboratory shall:

(a) cooperate fully with the United States department of agriculture for the benefit of the Montana wool industry; and

(b) keep a complete and comprehensive system of records covering its internal administration, activities, and meetings of its advisory committee and all sampling, testing, and research work.

(2) The wool laboratory may:

(a) receive any moneys which the federal government may make available for the use of the laboratory and pay all such funds to the state treasurer to be deposited in a special trust fund; and

(b) receive donations from individuals for the purposes of the laboratory, which shall also be paid to the state treasurer to be deposited in the special trust fund.

(3) All federal funds which may be provided and all funds which may be received by the laboratory for its use and benefit are hereby appropriated for the Montana wool laboratory.

(4) All moneys collected by the Montana wool laboratory shall be used for the payment of salaries and expenses, including purchase of equipment and supplies, and the erection of necessary buildings.

(5) The laboratory shall charge fees to woolgrowers which will cover actual costs for furnishing specific testing services. Such fees shall not include costs of doing research.

History: En. 75-8607 by Sec. 48, Ch. 2, L. 1971; R.C.M. 1947, 75-8607.

20-25-229. Montana seed laboratory. (1) There is established as a part of the agricultural experiment station the Montana seed laboratory.

(2) The purpose of the laboratory shall be the carrying on of effective scientific and practical research and testing work to develop as complete and accurate a knowledge of grains and seeds as possible.

(3) The laboratory shall be under the general direction of the director of the agricultural experiment station.

History: En. Sec. 6, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.4; amd. Sec. 31, Ch. 83, L. 1989.

Cross-References

Testing agricultural seeds, 80-5-108 through 80-5-112.

20-25-230. Acceptance of donations. The director, with the consent of the regents, may accept on behalf of the state of Montana, for the use of the agricultural experiment station, donations of real property, money, implements, scientific equipment, building materials, animals, supplies, and any other gifts considered beneficial by the director. Such donations may be accepted from both public and private sources, including the government of the United States.

History: En. Sec. 7, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.5.

20-25-231. Federal grants and cooperative research studies. The director of the agricultural experiment station may take appropriate steps to qualify for and receive grants and other forms of assistance made available by the government of the United States and may enter into agreements with governmental agencies for cooperative research studies.

History: En. Sec. 8, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.6.

Cross-References

Contracts and agreements for research by state agencies, 90-1-107.

20-25-232. Income from sale of products — disposition. Any income received from the sale of agricultural products and services by the agricultural experiment station or by any of the agricultural substations shall be deposited in the state treasury and shall be used to defray the costs of operating the station and substations.

History: En. Sec. 9, Ch. 29, L. 1971; Sec. 75-8411.7, R.C.M. 1947; En. 75-8603 by Sec. 44, Ch. 2, L. 1971; Sec. 75-8603, R.C.M. 1947; R.C.M. 1947, 75-8411.7, 75-8603(4).

20-25-233. Short title. Sections 20-25-233 through 20-25-236 may be cited as the "Montana Sustainable Agriculture Research and Education Act".

History: En. Sec. 1, Ch. 659, L. 1989.

20-25-234. Purpose. The purpose of 20-25-233 through 20-25-236 is to promote more research and education on sustainable agricultural practices, such as crop rotations, green manuring, integrated pest management, and maintenance of livestock health and quality with reduced use of growth hormones and antibiotics. Sections 20-25-233 through 20-25-236 are intended to foster economically and ecologically beneficial means of soil improvement, pest management, irrigation, cultivation, harvesting, animal husbandry, transportation, and marketing for Montana agriculture, based on methods designed to accomplish the following:

(1) control pests and diseases of agricultural importance through management practices and alternatives that reduce or eliminate dependence on pesticides and petrochemicals;

(2) improve soil fertility and tilth through the use of practices that reduce dependence on synthetically compounded petrochemical-based fertilizers;

(3) produce, process, and distribute food and fiber in ways that consider the interactions among soil, plants, water, air, animals, tillage, machinery, labor, energy, and transportation to enhance resource efficiency, conservation, and public health; and

(4) provide Montana farmers and ranchers with useful agriculture production and marketing information on alternative and specialty crops and livestock.

History: En. Sec. 2, Ch. 659, L. 1989.

20-25-235. Duties of Montana agricultural experiment station and cooperative extension service. The Montana agricultural experiment station and the cooperative extension service shall:

(1) develop a usable data base of existing research in low-input, sustainable agriculture;

(2) conduct educational programs for producers using material from the data base. Programs must include teaching producers techniques of low-input agriculture, assessment of risks involved with change, and marketing of products from their farms and ranches.

(3) extend research on the use of legumes to supply a portion of the nitrogen required by field crops;

(4) work with producers in establishing integrated pest management;

(5) begin research and development of marketable specialty crops and livestock that are integral to sustainable farming systems; and

(6) identify specific areas in which additional research is needed to enhance the adoption and success of low-input, sustainable agriculture in Montana.

History: En. Sec. 3, Ch. 659, L. 1989.

20-25-236. Report to legislature. The Montana agricultural experiment station and the cooperative extension service may, as provided in 5-11-210, report to the legislature regarding the expenditures, activities, and outcomes of the program provided for in 20-25-233 through 20-25-236.

History: **En. Sec. 4, Ch. 659, L. 1989; amd. Sec. 27, Ch. 112, L. 1991; amd. Sec. 27, Ch. 349, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 349 after "service" substituted "may" for "shall".

20-25-237. Local government center — purpose — funding. (1) There is a local government center at Montana state university. The purpose of the center is to strengthen the capacities of Montana's local governmental units to deliver essential services efficiently and to provide training, technical assistance, and research to local officials.

(2) The local government center may:

(a) receive and administer gifts, donations, and bequests;

(b) contract with individuals, organizations, and governmental agencies for cooperative endeavors; and

(c) apply for and receive grants from public and private agencies.

History: **En. Sec. 1, Ch. 443, L. 1993.**

20-25-238 through 20-25-240 reserved.

20-25-241. Montana forest and conservation experiment station established. There is hereby established in the university of Montana forestry school a station to be known as the Montana forest and conservation experiment station, which shall be under the direction of the board of regents.

History: **En. Sec. 1, Ch. 141, L. 1937; amd. Sec. 25, Ch. 253, L. 1974; R.C.M. 1947, 28-301.**

20-25-242. Purpose of station. (1) It is the purpose of this station to:

(a) study the forest and forest land resources of the state to the end that the state and its citizens may attain the highest economic and social benefits from the forest soils within the state and the influences and products flowing therefrom;

(b) study the growth and the utilization of timber with special reference to their improvement and the widening of the markets available to the state;

(c) determine:

(i) the relationship between the forest and water conservation and waterflow regulation;

(ii) the relationship between the forest and pasturage for domestic livestock and wildlife;

(iii) the relationship between the forest and recreation; and

(iv) those other direct and indirect benefits that may be secured by the maintenance of or the establishment of forests or woodlands;

(d) study and develop the establishment of windbreaks, shelterbelts, and woodlots on the farms of the state that moisture may be conserved thereby for the best production of agricultural crops and forage, for the prevention of soil wastage and erosion, to make the farm home more comfortable, and to produce forest material for the use of the farmer and the stockman;

(e) study the findings of other agencies that the information thus obtained may be used to improve the growth, management, and utilization of the timber within the state and to protect it against damage by fire, insects, disease, and other harmful agencies;

(f) collect, compile, and publish statistics relative to Montana forests and forestry and the influences flowing therefrom; prepare and publish bulletins and reports, with the necessary illustrations and maps, that the information collected by the station in forestry and in conservation may be made available for use; and distribute this information or material in such other ways as the board of regents may direct;

(g) collect a library and bibliography of literature pertaining to or useful for the purpose of 20-25-241 through 20-25-245;

(h) study logging, lumbering, and milling operations and other operations dealing with the products of forest soils with special reference to their improvement; investigate and make tests of forest products produced or that may be produced within the state that markets may be improved thereby;

(i) consider such other scientific and economic problems as, in the judgment of the board of regents, are of value to the people of the state;

(j) cooperate with the other departments of the university of Montana, the departments of the state government when mutually beneficial, and with private individuals and agencies and cooperate with the United States government and its branches as a land-grant institution or otherwise in accordance with their regulations;

(k) establish such field experiment stations as in the judgment of the board of regents may be necessary.

(2) The board of regents may accept, for and in behalf of the state of Montana, such gifts of land or other donations as may be made to the state for the purposes of 20-25-241 through 20-25-245.

History: En. Sec. 3, Ch. 141, L. 1937; amd. Sec. 26, Ch. 253, L. 1974; R.C.M. 1947, 28-303.

Cross-References

Conservation districts, Title 76, ch. 15.

20-25-243. Director of station. The dean of the forestry school, whoever shall hold that office from time to time, shall be the director of said Montana forest and conservation experiment station. The board of regents shall have the power and it shall be its duty to appoint or designate such assistants and employees as may be necessary and to fix the compensation of all persons connected with said station.

History: En. Sec. 2, Ch. 141, L. 1937; R.C.M. 1947, 28-302.

20-25-244. Oath of office. The dean of the forestry school, the officers and employees of said station, appointed or assigned, and their assistants shall take an oath to:

(1) perform all the services required of them under 20-25-241 through 20-25-245;

(2) guard carefully all confidential information accumulated in the progress of their work; and

(3) turn in to the station as state property all correspondence, notes, illustrations, and data of any kind accumulated by them in performing the work of the station.

History: En. Sec. 5, Ch. 141, L. 1937; R.C.M. 1947, 28-305.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Oath of office, 20-1-202.

20-25-245. Reports — disposition of income. (1) The board of regents may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the board of regents may direct and as the interests of the state and of science and industry may demand.

(2) Income received by the station shall be deposited in the state treasury and used for the purposes of administering 20-25-241 through 20-25-245.

History: En. Sec. 4, Ch. 141, L. 1937; amd. Sec. 234, Ch. 147, L. 1963; R.C.M. 1947, 28-304.

20-25-246 through 20-25-250 reserved.

20-25-251. Purpose of eastern Montana college. Eastern Montana college has for its primary purpose the instruction and training of teachers for the public schools of Montana.

History: En. 75-8423 by Sec. 23, Ch. 2, L. 1971; R.C.M. 1947, 75-8423.

20-25-252. Donations to eastern Montana college. The regents may accept for and on behalf of eastern Montana college any donations of lands and any other gifts for the use and benefit of the college.

History: En. 75-8425 by Sec. 25, Ch. 2, L. 1971; R.C.M. 1947, 75-8425.

20-25-253. Purpose of western Montana college of the university of Montana. Western Montana college of the university of Montana has for its primary purpose the instruction and training of teachers for the public schools of Montana.

History: En. 75-8424 by Sec. 24, Ch. 2, L. 1971; R.C.M. 1947, 75-8424; amd. Sec. 2, Ch. 224, L. 1989.

20-25-254. Donations to western Montana college of the university of Montana. The regents may accept for and on behalf of western Montana college of the university of Montana any donations of lands and any other gifts for the use and benefit of the college.

History: En. 75-8426 by Sec. 26, Ch. 2, L. 1971; R.C.M. 1947, 75-8426; amd. Sec. 3, Ch. 224, L. 1989.

20-25-255. Acceptance of public lands. (1) The regents shall receive, in the names of western Montana college of the university of Montana and eastern Montana college, all benefits derived from the distribution of lands contemplated in section 17 of an act of congress, approved February 22, 1889, entitled "An Act to Provide for the Division of Dakota Into Two States and to Enable the People of North Dakota, South Dakota, Montana, and Washington to Form Constitutions and State Governments and to be Admitted Into the Union on an Equal Footing With the Original States, and to Make Donations of Public Lands to Such States".

(2) The regents may, in carrying out the provisions of Title 20, pledge one-half of all interest and income derived from the land grant for the payment in whole or in part of notes, bonds, or other obligations issued by the regents for residence halls or other facilities at western Montana college of the university of Montana or at eastern Montana college, provided that any pledge shall be subject to any prior pledge.

History: En. 75-8427 by Sec. 27, Ch. 2, L. 1971; amd. Sec. 1, Ch. 289, L. 1971; amd. Sec. 8, Ch. 343, L. 1977; R.C.M. 1947, 75-8427; amd. Sec. 4, Ch. 224, L. 1989.

20-25-256. Purposes of northern Montana college. Northern Montana college has for its purpose instruction and education in:

(1) the English language, history, literature, mathematics, bookkeeping, moral philosophy, and political, rural, and household economy;

(2) mechanical arts, agricultural chemistry, animal and vegetable anatomy and physiology, and veterinary art;

(3) entomology, geology, and such other natural sciences as may be prescribed by the regents;

(4) agriculture, horticulture, and especially the application of science and the mechanical arts to practical agriculture in the field;

(5) irrigation and use of water for agricultural purposes; and

(6) all that relates to an efficient, modern manual training school.

History: En. 75-8428 by Sec. 28, Ch. 2, L. 1971; amd. Sec. 2, Ch. 29, L. 1971; R.C.M. 1947, 75-8428.

Part 3

Administration of University System

Part Cross-References

Cooperative agreements with district weed boards, 7-22-2151.

20-25-301. Regents' powers and duties. The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings with the university system, and shall:

(1) have general control and supervision of the units of the Montana university system, which is considered for all purposes one university;

(2) adopt rules, not inconsistent with the constitution and the laws of the state, for its own government which are proper and necessary for the execution of the powers and duties conferred upon it by law;

(3) provide, subject to the laws of the state, rules for the government of the system;

(4) grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion to confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of the institutions;

(5) keep a record of its proceedings;

(6) have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(7) receive from the board of land commissioners, other boards, persons, or from the government of the United States all funds, incomes, and other property the system may be entitled to and use and appropriate the property for the specific purpose of the grant or donation;

(8) have general control of all receipts and disbursements of the system;

(9) appoint a president and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

(10) confer upon the executive board of each of the units of the system authority that may be considered expedient relating to immediate control and

management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty;

(11) confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;

(12) prevent unnecessary duplication of courses at the units of the system;

(13) appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who is the state geologist, and appoint any other necessary assistants and employees and fix their compensation.

(14) supervise and control the agricultural experiment station, along with any executive or subordinate board or authority which may be appointed by the governor with the advice and consent of the regents;

(15) adopt a seal bearing on its face the words "Montana university system", which must be affixed to all diplomas and all other papers, instruments, or documents which may require it;

(16) assure an adequate level of security for data and information technology resources, as defined in 2-15-102, within the state university system. In carrying out this responsibility, the board of regents shall, at a minimum, address the responsibilities prescribed in 2-15-114.

History: **En. 75-8501 by Sec. 30, Ch. 2, L. 1971; R.C.M. 1947, 75-8501; amd. Sec. 7, Ch. 125, L. 1983; amd. Sec. 5, Ch. 21, L. 1985; (16)En. Sec. 4, Ch. 592, L. 1987; amd. Sec. 28, Ch. 112, L. 1991; amd. Sec. 28, Ch. 349, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 349 deleted second sentence of (13) that read: "The regents shall prepare and, as provided in 5-11-210, submit a report to each regular session of the legislature showing the progress and condition of the bureau, including any other necessary or required information"; and made minor changes in style.

Cross-References

Rulemaking exempt from Montana Administrative Procedure Act, 2-4-102.

Creation of advisory councils by regents, 2-15-122.

Number and notice of meetings, 20-2-112.

Duty to adopt rules and keep records, 20-2-114.

Duty of Board of Regents to prescribe duties of Commissioner of Higher Education, 20-2-131.

Supervision and coordination of community colleges by Board of Regents, 20-15-103.

Board of Land Commissioners, Title 77, ch. 1, part 2.

20-25-302. Revenue-producing facilities — powers of regents. The regents of the Montana university system may:

(1) purchase, construct, equip, or improve, at any unit of the Montana university system, any of the following types of revenue-producing facilities:

(a) land;

(b) residence halls, dormitories, houses, apartments, and other housing facilities;

(c) dining rooms and halls, restaurants, cafeterias, and other food service facilities;

(d) student union buildings and facilities; and

(e) those other facilities specifically authorized by joint resolution of the legislature;

(2) rent housing facilities and provide food and other services to the students, officers, guests, and employees of the unit at rates that will ensure

a reasonable net income over operating expenses and will provide for debt service and reserves and provide for the collection of charges, admissions, and fees for the use of other facilities by students and other persons, which charges, admissions, and fees shall not be deemed to be tuition within the meaning of 20-25-421 and may be collected from any or all students. Student building fees established and in effect on January 1, 1965, which are imposed uniformly upon all students or upon all of a specified class of students in attendance at any unit of the Montana university system shall not be increased without authorization by law unless absolutely necessary and then only to the extent necessary to pay principal or interest due on obligations for which such fees have been or shall be pledged or to maintain reserves securing the payment of such obligations in accordance with the indentures, resolutions, contracts, or other instruments authorizing the issuance of such obligations; provided that at any unit of the Montana university system where the aggregate amount of student building fees in effect on January 1, 1965, was less than $50 per student per academic year, such fees may be increased or additional student building fees may be established to an aggregate amount not exceeding $50 per student per academic year and provided further that additional student building fees may be established or existing student building fees may be increased at the university of Montana at Missoula to an aggregate amount not to exceed $90 per student per academic year. This limitation shall not affect admission or use charges which are made to individual students or others in proportion to their use or occupancy of particular facilities or services and shall not affect any student building fees or other charges which are made pursuant to 20-25-421 for nonresident students.

(3) hold the net income derived from the operation of such facilities and the charges, admissions, and fees so collected and devote the revenues from these sources to debt service and reserves, repairs, replacements, and betterments of the facilities or, so far as such revenues have not been previously obligated for these purposes, to the acquisition, erection, equipping, enlarging, or improvement of additional facilities of the types described in this section;

(4) exercise full control and complete management of such facilities;

(5) rent the facilities to other public or private persons, firms, and corporations for such uses, at such times, for such periods, and at such rates as in the regents' judgment will be consistent with the full use thereof for academic purposes and will add to the revenues available for capital costs and debt service;

(6) do all things necessary to plan for and propose financing, including all necessary loan applications, for:

(a) classroom, laboratory, library, bookstore, and other instructional facilities;

(b) office, recordkeeping, storage, equipment maintenance, and other administrative and operational facilities;

(c) stadiums, fieldhouses, armories, arenas, gymnasiums, swimming pools, and other facilities for athletic and military instruction, exhibitions, games, and contests;

(d) auditoriums, theaters, music halls, and other assembly, theatrical, musical, and entertainment facilities;

(e) hospital, nursing, and other health instruction and service facilities;

(f) nurseries, barns, arenas, pavilions, and other facilities for agricultural and livestock breeding, development, and exhibition;

(g) parking lots and ramps and other parking facilities; and

(h) land needed for such facilities.

History: En. 75-8503 by Sec. 32, Ch. 2, L. 1971; R.C.M. 1947, 75-8503; amd. Sec. 74, Ch. 370, L. 1987.

Cross-References

When construction authorized by regents, 18-2-102.

Legislative intent regarding construction of student housing, 18-2-103.

20-25-303. Local executive boards — terms and compensation. (1) There is a local executive board for each unit of the system.

(2) (a) Each local executive board shall consist of three members appointed by the governor with the advice and consent of the regents.

(b) The president of each unit shall not be a member of the local executive board.

(c) Two of the members must reside in the county where the unit is located.

(d) The members shall hold office for 3 years beginning the third Monday in April of the year appointed. The term of office of one member shall expire each year.

(e) The members may be removed by the governor or the regents.

(f) The members shall qualify by filing their oath of office with the regents.

(3) All vacancies shall be filled by appointment by the governor and referred to the regents at their first meeting thereafter for confirmation.

(4) Each local executive board shall elect a chairman and appoint a secretary.

(5) The compensation for the members shall be fixed by the regents. It shall not exceed $5 for each day spent in discharging their duties or $125 in any one year for each member. The members shall be reimbursed from the amount appropriated by the legislature for the maintenance and support of the units for all expenses necessarily incurred in discharge of their duties.

History: En. 75-8510 by Sec. 39, Ch. 2, L. 1971; R.C.M. 1947, 75-8510.

20-25-304. Powers of local executive boards. Each local executive board shall:

(1) meet at least once in each quarter and more often if required;

(2) have such immediate direction and control, other than financial, of the affairs of the respective units as may be conferred by the regents.

History: En. 75-8511 by Sec. 40, Ch. 2, L. 1971; amd. Sec. 1, Ch. 351, L. 1971; R.C.M. 1947, 75-8511.

20-25-305. President — powers and duties. Subject to the supervision of the regents, the president of each of the units of the system shall:

(1) have the immediate direction, management, and control of the respective units, including instruction, practical affairs, and scientific investigations;

(2) be the president of the general faculty and of the special faculties of the departments or colleges and the executive head of the unit in all its departments;

(3) have the duties of one of the professorships as long as the interests of the unit require it;

(4) perform the duties of corresponding secretary for the unit;

(5) make an annual report to the regents containing such information as they may request; and

(6) furnish any special report on request of the regents or the legislature.

History: En. 75-8512 by Sec. 41, Ch. 2, L. 1971; R.C.M. 1947, 75-8512.

20-25-306. Designation of holidays by board of regents. (1) The board of regents of higher education may designate the following business days as holidays for all employees of the university system in exchange for the same number of legal holidays enumerated in 1-1-216:

(a) the Friday following Thanksgiving;

(b) the Monday before Christmas Day or New Year's Day if either holiday falls on Tuesday; and

(c) the Friday after Christmas Day or New Year's Day if either holiday falls on Thursday.

(2) A full-time employee who is scheduled for a day off on a day that is designated as a holiday under subsection (1) is entitled to receive another day off with pay during the same pay period of the designated holiday or as scheduled by the employee and his supervisor in addition to the employee's regularly scheduled days off provided the employee is in a pay status on his last regularly scheduled working day immediately before the holiday or on his first regularly scheduled working day immediately after the holiday. Part-time employees receive pay for the designated holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

History: En. Sec. 1, Ch. 340, L. 1981.

20-25-307 through 20-25-310 reserved.

20-25-311. Motor vehicle regulation — parking and operation. The regents of the Montana university system are authorized to make rules at each unit of the university system concerning the parking and operation of motor vehicles upon the grounds, streets, drives, and alleys of each unit.

History: En. Sec. 1, Ch. 398, L. 1971; R.C.M. 1947, 75-8503.2.

Cross-References

Rulemaking by regents not subject to Montana Administrative Procedure Act, 2-4-102.

Drivers' licenses, Title 61, ch. 5.

Responsibility of vehicle users and owners, Title 61, ch. 6.

Traffic regulation, Title 61, ch. 8.

20-25-312. Motor vehicle regulation — enforcement of regulations — appeals. (1) The regents may authorize the president of each unit to:

(a) assess fees for parking on campus subject to the approval of the regents after the regents' consultation with the respective student governing body of the unit;

(b) assess fines in accordance with a published schedule for violations of motor vehicle or parking regulations of each unit in an amount not to exceed $10 per offense;

(c) order the removal of vehicles parked in violation of motor vehicle regulations of each unit at the expense of the violator;

(d) establish a system of appeals at each unit concerning parking violations;

(e) withhold the amount of any unpaid parking fine from any amount owing any student, employee, or faculty member, subject to the provisions of 17-4-105;

(f) prohibit a student from registering if said student has unpaid parking assessments or fines outstanding resulting from on-campus motor vehicle or parking violations within the previous year.

(2) The proceeds from fines and fees collected shall be remitted to the unit at which collections are made to be used for appropriate maintenance and construction of parking facilities and for traffic control.

History: En. Sec. 2, Ch. 398, L. 1971; amd. Sec. 1, Ch. 246, L. 1974; R.C.M. 1947, 75-8503.3; amd. Sec. 1, Ch. 150, L. 1979; amd. Sec. 1, Ch. 91, L. 1985; amd. Sec. 3, Ch. 160, L. 1985.

Cross-References

Authority of regents to authorize construction of facilities, 18-2-102.

20-25-313 through 20-25-320 reserved.

20-25-321. Security department members — appointment — powers. (1) The regents of the Montana university system may appoint one or more persons to be members of security departments at each unit of the university system, as such security departments are constituted on July 1, 1971, or may thereafter be constituted. Persons employed and compensated as members of the security departments when so appointed are peace officers; however, such peace officers shall not exercise their authority except:

(a) upon the campuses of the Montana university system and, for campus-related activities, an area within 1 mile of the exterior boundaries of each thereof; and

(b) in or about other grounds or properties owned, operated, controlled, or administered by the regents or any unit of the Montana university system.

(2) Such officers shall have no power to serve and execute civil processes.

History: En. Sec. 1, Ch. 405, L. 1971; R.C.M. 1947, 75-8513.

Cross-References

"Peace officer" defined, 1-1-207, 45-2-101.

Enforcement of Montana Alcoholic Beverage Code by peace officers, 16-1-101, 16-6-102 through 16-6-107.

Mutual assistance for peace officers, Title 44, ch. 11.

False alarms or reports to peace officers, 45-7-204, 45-7-205.

Failure to aid police officer, 45-7-304.

Failure to report felony to peace officers, 45-7-305.

Exemption for peace officers from concealed weapon laws, 45-8-317.

Stop and frisk authority of peace officers, 46-5-401.

20-25-322. Traffic citations — agreements with city or county. The president of each unit may in his discretion enter into an agreement with the city or county in which his unit is located to authorize members of the unit's security department to issue citations for parking or moving traffic violations as defined by state or municipal laws which occur within the boundaries of the campus or on streets or alleys contiguous thereto. All such citations shall be considered within the jurisdiction of the appropriate local authority and shall be handled in the same manner as citations issued by peace officers of such local authority.

History: **En. Sec. 2, Ch. 405, L. 1971; R.C.M. 1947, 75-8514.**

Cross-References

Traffic regulation, Title 61, ch. 8.

Power of local authorities, 61-8-103.

20-25-323. Control and direction of security department. The president of each unit shall have general control and direction of the security department of his unit.

History: **En. Sec. 3, Ch. 405, L. 1971; R.C.M. 1947, 75-8515.**

20-25-324. Firearms. Security guards who have successfully completed the basic course in law enforcement conducted by the Montana law enforcement academy may carry firearms in accordance with policies established by the board of regents after consulting with the student body government at the unit of the university system affected by the regents' policy.

History: **En. Sec. 4, Ch. 405, L. 1971; R.C.M. 1947, 75-8516; amd. Sec. 1, Ch. 404, L. 1981; amd. Sec. 1, Ch. 430, L. 1991.**

Cross-References

Training standards prescribed by Board of Crime Control, 44-4-301.

Curriculum of Law Enforcement Academy, 44-10-202.

Weapons, Title 45, ch. 8, part 3.

Part 4
Miscellaneous Finance

Part Compiler's Comments

Interim Committee on Postsecondary Education Policy and Budget: Chapter 387, L. 1993, provided: "Section 1. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) "Committee" means the joint committee on postsecondary education policy and budget created in [section 2].

(2) "University system" means those units listed in 20-25-201 and the vocational-technical centers designated in 20-16-106.

Section 2. Joint committee on postsecondary education policy and budget — appointment and composition. (1) There is a joint committee on postsecondary education policy and budget.

(2) The committee is composed of:

(a) four members of the senate, appointed by the committee on committees on a bipartisan basis, and four members of the house of representatives, appointed by the speaker of the house on a bipartisan basis. One of the legislative members shall serve as presiding officer upon election by a vote of committee members.

(b) two regents appointed by the chairman of the board of regents and one student of the university system appointed by the governor; and

(c) a representative from the executive branch appointed by the governor.

(3) Legislative appointments must be made before final adjournment of a regular session.

(4) All other appointments must be made prior to the first committee meeting following adjournment of a regular session.

Section 3. Term of office. (1) Legislative appointments to the committee are for 2 years. A legislative member of the committee shall serve until the legislator's term of office is ended.

(2) Appointments of members of the board of regents and the student to the committee are for 2 years or until the expiration of the members' terms on the board of regents, whichever occurs first.

(3) The appointment of an executive branch representative to the committee is for 2 years.

Section 4. Vacancies. (1) A legislative vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A legislative vacancy occurring when the legislature is not in session must be filled by the selection of a member from the appropriate house and political party by the remaining members of the committee.

(3) All other vacancies must be filled in the same manner as the original appointment.

(4) An appointment to the committee under this section is for the unexpired term of the original member.

Section 5. Officers — quorum — meetings. (1) The committee shall select one of its legislative members as presiding officer and may elect other officers it considers necessary.

(2) A simple majority of the committee constitutes a quorum to do business.

(3) The committee shall meet at least quarterly.

Section 6. Compensation. (1) Legislative members are entitled to receive compensation and expenses as provided in 5-2-302.

(2) Members appointed by the board of regents are entitled to:

(a) $50 for each day in which a member is actually and necessarily engaged in the performance of committee duties; and

(b) travel expenses, as provided for in 2-18-501 through 2-18-503.

Section 7. Staff assistance. The legislative fiscal analyst shall provide staff assistance to the committee. The legislative fiscal analyst has the same authority of investigation and examination on behalf of the committee as provided under 5-12-303.

Section 8. Powers and duties of committee. (1) The committee may:

(a) organize and adopt rules to govern its proceedings; and

(b) exercise the investigatory powers of a standing committee under Title 5, chapter 5, part 1.

(2) The committee shall:

(a) provide information to the board of regents in the following areas:

(i) annual budget allocations;

(ii) annual goal statement development;

(iii) long-range planning;

(iv) outcome assessment programs; and

(v) any other area that the committee considers to have significant educational or fiscal policy impact;

(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;

(c) periodically review the results of outcome assessment programs;

(d) develop mechanisms to ensure strict accountability of the revenues and expenditures of the university system;

(e) study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;

(f) act as a liaison between both the legislative and executive branches and the board of regents;

(g) encourage cooperation between the legislative and executive branches and the board of regents; and

(h) report its activities, findings, recommendations, and any proposed legislation to the legislature." The Committee was established April 19, 1993, and terminates July 1, 1995.

Part Cross-References

State university funds, Art. X, sec. 10, Mont. Const.

Genetic engineering technology research and development account — Montana State University, 17-2-131.

Submission deadline for budget reports, 17-7-112.

Collection of retirement fund contributions, 19-1-825.

20-25-401. Student building fees at Montana state university. The board of regents of the Montana university system is authorized to establish and collect student building fees for all students or for all of any specified class of students in attendance at Montana state university, Bozeman, Montana, in the amount of $9.25 per student for each quarter of the academic year and for each summer session and to pledge the receipts of such fees for the payment of the cost of acquisition, construction, and equipment of physical education, athletic, and recreation facilities at the university or of the principal and interest on revenue bonds to be issued to finance such facilities, in accordance with the provisions of parts 3 and 4 of this chapter. Of the fee so authorized, $3 is included in the student building fees established and in effect at the university on January 1, 1965, and the remainder is authorized as an increase in such fees pursuant to 20-25-302.

History: En. Sec. 1, Ch. 223, L. 1971; R.C.M. 1947, 75-8503.1.

Cross-References

Construction contracts, Title 18, ch. 2.

20-25-402. Borrowing by regents. In carrying out the powers provided in 20-25-107, 20-25-301, and 20-25-302, the regents may:

(1) borrow money for any purpose or purposes stated in parts 3 and 4 of this chapter, including, if considered desirable by the regents, the payment of interest on the money borrowed for a facility during the construction thereof and for 1 year thereafter and the creation of a reserve for the payment of bond principal and interest;

(2) make purchases on a time or installment basis;

(3) issue bonds, notes, and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which shall be fully negotiable notwithstanding any limitation on the source of payment thereof, or fully registered bonds or bonds registered as to ownership of principal only;

(4) pledge for the payment of the purchase price of any facility or of the principal and interest on bonds, notes, or other securities authorized in this chapter or otherwise obligate:

(a) the net income received from rents, board, or both in housing, food service, and other facilities;

(b) receipts from student building, activity, union, and other special fees prescribed by the regents for all students; and

(c) other income in the form of gifts, bequests, contributions, federal grants of funds, including the proceeds or income from grants of lands or other real or personal property; receipts from athletic and other contests, exhibitions, and performances; and collections of admissions and other charges for the use of facilities, including all use by other persons, firms, and corporations for athletic and other contests, exhibitions, and performances and for the conduct of their business, educational, or governmental functions;

(5) make payments on loans or purchases from any other available income not obligated for those purposes, including receipts from sale of materials, equipment, and fixtures of the facilities or from sales of the facilities themselves, other than land;

(6) secure any bonds authorized hereunder by a trust indenture between the regents and any bank or trust company within or without the state of Montana or by a resolution establishing covenants of the regents with the holders of such bonds relating to:

(a) the construction, operation, use, and insurance of the facilities;

(b) the segregation, expenditure, and audit of accounts of the bond proceeds and of the income pledged;

(c) the establishment and collection of rents, charges, admissions, and fees sufficient to provide net income adequate for prompt payment of principal and interest on bonds and creation and maintenance of reserves for that purpose; and

(d) such other matters as the regents may determine to be necessary or desirable for the security and marketability of the bonds;

(7) issue and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations issued by the regents before or after January 29, 1971, subject to the following provisions:

(a) refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold at a price not less than par plus accrued interest. They may be secured by a pledge of the same revenue as the bonds refunded or by a pledge of different or additional revenues received at the same unit of the university. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of the outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

(b) refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient or if they are issued to refund before maturity bonds issued before January 1, 1965, for the purpose of releasing revenues required for payment of the outstanding bonds permitting the pledge thereof for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(c) in any case where refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than $1 million and shall be invested in the amount and in securities maturing on the dates and bearing interest at the rates which will be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which the bond may be called for redemption from the proceeds of the refunding bonds and to pay and redeem the principal amount of each bond at maturity or, if prepayable, on that redemption date and any premium required for redemption on that date. The resolution or indenture authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with such escrow funds shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. The securities shall be purchased simultaneously with the delivery of the refunding bonds.

(d) revenues or other funds on hand, in excess of the amount pledged by resolutions or indentures authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the regents for the purpose of refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of those bonds and may be invested and disbursed as provided in subsection (7)(c) hereof to the extent consistent with the resolutions or indentures authorizing such outstanding bonds.

(8) sell bonds and sell or exchange refunding bonds issued hereunder in the manner and upon the terms as to maturities, interest rates, and redemption privileges and for the price that the regents determine with the approval of the department of administration.

History: En. 75-8504 by Sec. 33, Ch. 2, L. 1971; amd. Sec. 32, Ch. 266, L. 1977; R.C.M. 1947, 75-8504.

Cross-References

Bond issues, Title 17, ch. 5.

20-25-403. State not obligated. No obligation created under this chapter shall ever become a charge against the state of Montana, and all such obligations, including principal and interest, shall be payable solely from the sources authorized in this chapter.

History: En. 75-8505 by Sec. 34, Ch. 2, L. 1971; R.C.M. 1947, 75-8505.

20-25-404. Revenue-producing facilities considered as one. In creating and discharging obligations under this chapter, all of the revenue-producing facilities at each unit of the Montana university system may be considered as one, but income received at one unit shall not be used to discharge obligations created for facilities at another unit.

History: En. 75-8506 by Sec. 35, Ch. 2, L. 1971; R.C.M. 1947, 75-8506.

Cross-References

Authorization for construction of revenue-producing facilities, 18-2-102.

20-25-405. Restriction on use of state funds. No state funds except those specified in 20-25-402 shall be obligated or used for the purposes of parts 3 and 4 of this chapter unless specifically directed by the legislature.

History: En. 75-8507 by Sec. 36, Ch. 2, L. 1971; R.C.M. 1947, 75-8507.

20-25-406. Previous contracts unimpaired. This chapter shall not impair any contract, indenture, or agreement executed under previous laws.

History: En. 75-8508 by Sec. 37, Ch. 2, L. 1971; R.C.M. 1947, 75-8508.

Cross-References

Impairment of contracts prohibited, Art. II, sec. 31, Mont. Const.

20-25-407. Prior obligations not affected. No provision of this chapter shall affect or impair:

(1) any contract or undertaking or the financing or agreement to finance any contract or undertaking entered into under the provisions of the laws repealed hereby prior to January 18, 1971; and

(2) the issuance of bonds to finance facilities authorized or commenced under the laws repealed hereby prior to January 18, 1971.

History: En. 75-8509 by Sec. 38, Ch. 2, L. 1971; R.C.M. 1947, 75-8509.

Cross-References

Impairment of contracts prohibited, Art. II, sec. 31, Mont. Const.

20-25-408 through 20-25-420 reserved.

20-25-421. Charges for tuition — waivers. The regents may:

(1) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction;

(2) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements which provide for the payment, where required, of the student support fee by the reciprocal state;

(3) waive resident tuition for students at least 62 years of age;

(4) waive tuition and fees for:

(a) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(b) persons designated by the department of family services pursuant to 52-5-112;

(c) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(d) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States; or

(e) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action;

(5) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of his choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(a) a paid or volunteer member of a municipal or rural fire department;

(b) a law enforcement officer as defined in 7-32-201; or

(c) a full-time highway patrol officer.

History: En. 75-8601 by Sec. 42, Ch. 2, L. 1971; amd. Sec. 1, Ch. 231, L. 1971; amd. Sec. 1, Ch. 286, L. 1971; amd. Sec. 1, Ch. 432, L. 1971; amd. Sec. 1, Ch. 472, L. 1973; amd. Sec. 1, Ch. 171, L. 1974; R.C.M. 1947, 75-8601; amd. Sec. 1, Ch. 170, L. 1989.

Cross-References

Rules for determining residence, 1-1-215, 20-25-503, 20-25-504.

Free tuition to residents of Mountain View School or Pine Hills School, 52-5-112.

20-25-422. *(Temporary)* **Support of university of Montana.** (1) For the support and endowment of the university there is annually and perpetually appropriated:

(a) the university fund income and all other sums of money appropriated by law to the university fund after any deductions made under Title 77, chapter 1, part 6;

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

(2) The entire income of all the funds must be placed at the disposal of the regents by transfer to its treasurer and must be kept separate and distinct from all other funds. The income must be used solely for the support of the colleges and departments of the university or those connected with the university.

(3) All means derived from other public or private bounty must be exclusively devoted to the specific objects designated by the donor. *(Terminates June 30, 1995—sec. 12, Ch. 533, L. 1993.)*

20-25-422. *(Effective July 1, 1995)* **Support of university of Montana.** (1) For the support and endowment of the university there is annually and perpetually appropriated:

(a) the university fund income and all other sums of money appropriated by law thereto;

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

(2) The entire income of all such funds shall be placed at the disposal of the regents by transfer to its treasurer and shall be kept separate and distinct from all other funds. The income shall be used solely for the support of the colleges and departments of the university or those connected therewith.

(3) All means derived from other public or private bounty shall be exclusively devoted to the specific objects for which they shall have been designated by the donor.

History: En. 75-8602 by Sec. 43, Ch. 2, L. 1971; R.C.M. 1947, 75-8602; amd. Sec. 7, Ch. 533, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 533 in (1)(a), at end, inserted "to the university fund after any deductions made under Title 77, chapter 1, part 6"; and made minor changes in style. Amendment effective June 30, 1993, and terminates June 30, 1995.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

State university funds inviolate, Art. X, sec. 10, Mont. Const.

Deposits and investments, Title 17, ch. 6.

20-25-423. State tax levy — support of public education institutions. The legislature shall levy a property tax of not more than 6 mills on the taxable value of all real and personal property each year for 10 years beginning with the year 1989. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system.

History: En. Sec. 1, Ref. 75, app. Nov. 7, 1978; amd. Sec. 1, Ref. 106, app. Nov. 8, 1988.

Cross-References

Tax levy for the Montana University System, 15-10-106.

20-25-424. Receipt of funds. (1) The treasurer of Montana state university may receive the cash appropriation received from the United States by authority of the act of congress of August 30, 1890, known as the second Morrill Act and the act of congress of March 4, 1907, known as the Nelson Amendment, to be expended by the executive board under the general supervision of the regents only for the purpose for which it was appropriated by congress.

(2) On or before December 1 of each year, the state university shall make detailed reports of the amounts received and disbursed under the provisions of the acts of congress of August 30, 1890, March 16, 1906, and March 4, 1907, to the secretaries of agriculture and interior of the United States, as required by the acts of congress.

History: En. 75-8605 by Sec. 46, Ch. 2, L. 1971; amd. Sec. 9, Ch. 343, L. 1977; R.C.M. 1947, 75-8605(1)(a), (2); amd. Sec. 6, Ch. 21, L. 1985.

Cross-References

Fiscal year and financial reports, 17-2-110.

20-25-425. Control of expenditures. Pursuant to the terms of appropriations of the legislature or of congress or of gifts of donors, the regents shall determine the need for all expenditures and control the purposes for which all funds shall be spent, subject to the provisions of the law dealing with state purchases.

History: En. 75-8609 by Sec. 50, Ch. 2, L. 1971; amd. Sec. 33, Ch. 266, L. 1977; R.C.M. 1947, 75-8609.

Cross-References

Uniform accounting system and expenditure control requirements, 17-1-102.

Procurement generally, Title 18, ch. 4.

Special purchasing conditions, Title 18, ch. 5.

20-25-426. Donations, grants, gifts. All donations, grants, gifts, or devises shall be made to each unit in its legal name. If made to any officer or board of the unit, they shall be immediately transferred to the unit.

History: En. 75-8610 by Sec. 51, Ch. 2, L. 1971; R.C.M. 1947, 75-8610.

20-25-427. Allocation of indirect cost reimbursements. Any reimbursement for indirect costs associated with a grant to or contract with the Montana university system or any of its units is allocated to the designated subfund of the university current fund, as provided in 17-2-102, for distribution to the unit receiving the grant or under the contract.

History: En. Sec. 1, Ch. 624, L. 1989.

20-25-428 through 20-25-430 reserved.

20-25-431. Construction project at Montana state university and eastern Montana college. (1) Under the provisions of 20-25-302(1) and 18-2-102, the legislature authorizes and consents to a capital construction program at Montana state university, Bozeman, Montana, and eastern Montana college at Billings, Montana, consisting of the acquisition, construction, and equipping of improvements to:

(a) the student union building at Montana state university;

(b) the physical education, athletic, and recreational facilities at Montana state university; and

(c) the physical education, athletic, and recreational facilities at eastern Montana college.

(2) The legislature further consents to the financing of these projects by the board of regents of higher education from gifts, grants, fees and earnings and from the issuance of bonds by the board of regents in accordance with 20-25-402, 20-25-432, and 20-25-433.

History: En. Sec. 1, Ch. 672, L. 1979.

20-25-432. Bonds for construction project — limits. Upon request of the board of regents, the board of examiners is authorized to issue and sell long-range building program bonds upon the conditions and in the manner stated in Title 17, chapter 5, part 4:

(1) in a principal amount not to exceed $4,000,000 for the purpose of financing the costs of the student union building at Montana state university; and

(2) in a principal amount not to exceed $2,500,000 for the purpose of financing the costs of the physical education, athletic, and recreational facilities at Montana state university; and

(3) in a principal amount not to exceed $1,500,000 for the purpose of financing the cost of the physical education, athletic, and recreational facilities at eastern Montana college. In addition to the bonding authorization, $800,000 of federal or private funds is authorized.

History: En. Sec. 2, Ch. 672, L. 1979.

20-25-433. Sale and issuance of bonds — requirements. The sale and issuance of bonds pursuant to 20-25-432 shall be subject to an undertaking by the board of regents to pay the state treasurer for deposit in the debt service fund established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on the bonds. The undertaking by the board of regents may be in the form of a revenue bond or bonds issued by the board of regents to the board of examiners or it may be in the form of an agreement between the board of regents and board of examiners. The payments under any such bonds or agreement shall be from such revenues, fees, and income as are lawfully available to the board of regents to pay the costs of facilities to be financed by the long-range building program bonds hereby authorized or to pay debt service on obligations of the board of regents incurred with respect to such facilities and costs. All agreements or bond arrangements entered into between the board of regents and the department of administration will specifically require the board to maintain debt service payments and the reserve requirement to the long-range building debt service fund. If enrollment reductions should endanger these payments, the regents shall insure continued payments through budget adjustments which include fee increases. With the approval of the board of examiners, any undertaking and the payments thereunder may be subordinated to other obligations of the board of regents upon such terms as the board of examiners considers appropriate. The undertaking of the board of regents shall be solely for the benefit of and enforceable by the state and may not be enforceable by the holders of the long-range building program bonds. The bonds may be issued in one or more series.

History: En. Sec. 3, Ch. 672, L. 1979; amd. Sec. 24, Ch. 298, L. 1983.

20-25-434. Deposit and expenditure of bond proceeds. The proceeds of the bonds authorized by 20-25-431 and 20-25-432 shall be deposited in the capital projects fund created by 17-5-401(2). No construction or related bids shall be let until the bond proceeds are deposited in the capital projects fund. The amount of such proceeds is appropriated from the capital projects fund to the board of regents for the purpose for which the bonds are authorized.

History: En. Sec. 4, Ch. 672, L. 1979; amd. Sec. 25, Ch. 298, L. 1983.

20-25-435 through 20-25-439 reserved.

20-25-440. Honors college program building. The university of Montana may construct an honors college program building costing up to $2 million to be financed with private funds. The department of administration shall administer the construction project.

History: En. Sec. 1, Ch. 22, L. 1993.

Compiler's Comments

Effective Date: Section 4, Ch. 22, L. 1993, provided: "[This act] is effective on passage and approval." Approved February 8, 1993.

20-25-441. Lease of university of Montana property for stadium authorized. The board of regents may lease land or land and facilities to a private nonprofit foundation organized to solicit, manage, and administer gift revenues on behalf of the university of Montana for the purpose of renovation or construction by the foundation of a football stadium for the university of Montana. The terms of the lease must be advantageous to the state and must include a guarantee that no commitment of funds to any portion of the initial construction, other than as approved in Senate Joint Resolution No. 14 of the 48th Legislature, is expressed or implied.

History: En. Sec. 1, Ch. 477, L. 1985.

Cross-References

State building leases, Title 18, ch. 3, part 1.

20-25-442. Stadium construction on leased land. The construction of stadium facilities on land leased under 20-25-441 is not subject to the requirements of Title 18, chapter 2, except that:

(1) the department of administration shall execute the provisions of 18-2-103(1)(a) and (1)(e);

(2) the provisions of Title 18, chapter 2, part 4, apply to all labor except donated labor; and

(3) such other provisions of law as may be required to protect the interests of the state of Montana.

History: En. Sec. 2, Ch. 477, L. 1985.

Cross-References

State building leases — awarding contract, 18-3-103.

State building leases — contract provisions, 18-3-104.

20-25-443 through 20-25-450 reserved.

20-25-451. Interest on student activity fees. Interest earned on investment of student activity fees used to support a student government at a unit of the university system may be retained by the student government supported by the fees.

History: En. Sec. 1, Ch. 341, L. 1987.

Part 5

University Students — Qualifications and Rights

Part Cross-References

Pupil immunization requirements, Title 20, ch. 5, part 4.

Student financial assistance, Title 20, ch. 26.

Use of force by parent, guardian, or teacher, 45-3-107.

20-25-501. Definitions. (1) Terms used in this part are defined as follows:

(a) "Domicile" means a person's true, fixed, and permanent home and place of habitation.

(b) "Emancipated minor" means a person under the age of 18 years who supports himself from his own earnings or is married. A person who received more than 25% of the cost of supporting himself from any person other than an agency of the government shall not be considered an emancipated minor.

(c) "Minor" means a male or female person who has not obtained the age of 18 years.

(d) "Qualified person" means a person legally qualified to determine his own domicile.

(e) "Resident student" means:

(i) a student who has been domiciled in Montana for 1 year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education shall not alone be sufficient to qualify for residence in Montana.

(ii) any graduate of a Montana high school whose parents, parent, or guardian have resided in Montana at least 1 full year of the 2 years immediately preceding his graduation from high school. Such classification shall continue for not more than 4 academic years if the student remains in continuous attendance at a unit; or

(iii) a member of the armed forces of the United States assigned to and residing in Montana, his spouse, or his dependent children.

(2) In the event the definition of residency or any portion thereof is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system shall have authority to make rules on what constitutes adequate evidence of residency status not inconsistent with such court decisions.

History: En. 75-8702 by Sec. 53, Ch. 2, L. 1971; amd. Sec. 17, Ch. 240, L. 1971; amd. Sec. 1, Ch. 395, L. 1971; amd. Sec. 28, Ch. 94, L. 1973; amd. Sec. 1, Ch. 397, L. 1973; R.C.M. 1947, 75-8702; amd. Sec. 1, Ch. 435, L. 1979.

Cross-References

Rules for determining residence, 1-1-215.

Rulemaking power of regents not subject to Montana Administrative Procedure Act, 2-4-102.

20-25-502. Qualification of students. The university system is open to all people, subject to such uniform regulations as the regents deem proper.

History: En. 75-8701 by Sec. 52, Ch. 2, L. 1971; amd. Sec. 37, Ch. 535, L. 1975; R.C.M. 1947, 75-8701(part).

Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Illegal discrimination, Title 49, ch. 2.

Governmental code of fair practices, Title 49, ch. 3.

20-25-503. Presumptions and rules as to domicile. (1) Unless the contrary appears to the unit registering authority, it is presumed the domicile of a minor is that:

(a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or

(b) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state.

(2) A resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of 4 years after marriage.

(3) Residence is not lost because of relocation as a member of the armed forces of the United States.

(4) A new domicile is established by a qualified person if he is physically present in Montana with no intention to acquire a domicile outside of Montana.

(5) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(6) Montana high school graduates are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; or

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

(7) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for his spouse or any dependent minor child, or both. If such person meets the requirement of full-time employment within the state of Montana and files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes and renounces his residency in any other state and is not himself in the state primarily as a student, his spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate so long as he continues his Montana domicile. In the administration of this subsection, neither the full-time employee or spouse shall be eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse.

History: En. 75-8703 by Sec. 54, Ch. 2, L. 1971; amd. Sec. 2, Ch. 395, L. 1971; amd. Sec. 2, Ch. 164, L. 1975; amd. Sec. 34, Ch. 266, L. 1977; R.C.M. 1947, 75-8703; amd. Sec. 2, Ch. 435, L. 1979.

Cross-References

Rules for determining residence, 1-1-215.

20-25-504. Evidence as to domiciliary intent — changes in status. (1) To determine the domicile of a person, the units of the system shall apply the following rules:

(a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.

(b) A person must intend to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary. A written statement of the evidence shall be filed with the registering authority of the unit. Changes in classification shall be in writing signed by the registering authority and shall take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if his parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom he customarily resides or legal guardian or person having legal custody completes the requirements for establishing domicile heretofore set forth.

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in his or his dependent's classification for tuition and fee purposes unless he completes 12 continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the executive secretary of the Montana university system. Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of his decision and a complete file on the student to the executive secretary. The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons. Within 30 days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of his decision. The executive secretary's decision may be appealed to the regents if the regents agree to entertain such an appeal.

History: En. 75-8704 by Sec. 55, Ch. 2, L. 1971; amd. Sec. 3, Ch. 395, L. 1971; amd. Sec. 3, Ch. 164, L. 1975; R.C.M. 1947, 75-8704.

20-25-505. Repealed. Sec. 3, Ch. 170, L. 1989.

History: En. 75-8705 by Sec. 56, Ch. 2, L. 1971; amd. Sec. 1, Ch. 350, L. 1971; amd. Sec. 35, Ch. 266, L. 1977; R.C.M. 1947, 75-8705.

20-25-506. Military instruction. All able-bodied students of the university system may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state.

History: En. 75-8701 by Sec. 52, Ch. 2, L. 1971; amd. Sec. 37, Ch. 535, L. 1975; R.C.M. 1947, 75-8701(part).

20-25-507 through 20-25-510 reserved.

20-25-511. Student's right of privacy — legislative intent. It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities which are necessary to protect the health, safety, and privacy of a person's residence and the privacy of his records. Intrusions by peace officers and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions. Further, a student may not be subjected to discrimination in the manner of covert records.

History: En. Sec. 1, Ch. 357, L. 1973; R.C.M. 1947, 75-8706; amd. Sec. 78, Ch. 575, L. 1981.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

"Peace officer" defined, 1-1-207, 45-2-101.

Public records, Title 2, ch. 6.

Confidential communications by student, 26-1-809.

20-25-512. Contracts waiving right to privacy prohibited. A university or college facility may not require a student to sign any contract which would waive his or her right to privacy and due process of law.

History: En. Sec. 2, Ch. 357, L. 1973; R.C.M. 1947, 75-8707.

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

20-25-513. Written notice required for entry to student's room — emergency. An authorized official of the university or college may not enter the room of a student located at such institution unless he has given the student a notice in writing. An emergency such as a fire or a call for help or where there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In such an emergency, evidence of crime obtained as a result of such emergency entry shall not be admissible in any court of law unless due process of law has been satisfied in obtaining such evidence.

History: En. Sec. 3, Ch. 357, L. 1973; R.C.M. 1947, 75-8708.

Cross-References

Search and seizure, Title 46, ch. 5.

20-25-514. Search in accordance with law. A search or entry by any law enforcement official shall be in accordance with the laws of the city, county, state, and nation.

History: En. Sec. 4, Ch. 357, L. 1973; R.C.M. 1947, 75-8709.

Cross-References

Search and seizure, Title 46, ch. 5.

20-25-515. Release of student records. A university or college shall release a student's academic record only when requested by the student or by a subpoena issued by a court or tribunal of competent jurisdiction. A student's written permission must be obtained before the university or college may release any other kind of record unless such record shall have been subpoenaed by a court or tribunal of competent jurisdiction.

History: En. Sec. 5, Ch. 357, L. 1973; R.C.M. 1947, 75-8710.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

20-25-516. Academic records to be kept separate — student's right to examine records. (1) Academic records shall be kept separate from disciplinary and all other records. Academic transcripts shall contain only information of academic nature.

(2) A student shall have the right to examine all written summaries, descriptions, statements, or reports of academic or disciplinary nature which may have been compiled upon him or her.

History: En. Sec. 6, Ch. 357, L. 1973; R.C.M. 1947, 75-8711.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

Part 6

Health Education — Drug and Alcohol Instruction

Part Cross-References

Dangerous drugs, Title 45, ch. 9; Title 50, ch. 32.

Alcoholism and drug dependence, Title 53, ch. 24.

20-25-601. Purpose of part — legislative intent. It is the purpose of this part to protect the health and safety of the people of Montana from the menace of drug and alcohol abuse. The legislature intends to require education graduates of any unit of the Montana university system or any private college or private university in Montana to be aware of the problems resulting from drug and alcohol abuse and to be somewhat knowledgeable in dealing with these problems among students.

History: En. Sec. 1, Ch. 396, L. 1971; amd. Sec. 3, Ch. 137, L. 1975; R.C.M. 1947, 75-8901.

20-25-602. Teacher instruction — colleges to offer course. All units of the Montana university system and all private colleges and private universities in Montana that offer any degree in education shall establish a credit course in health education to include drug and alcohol education and abuse by July 1, 1972. The content of the courses established in the Montana university system shall be reviewed and approved by the board of regents of the Montana university system before being offered for study in the units of the Montana university system.

History: En. Sec. 2, Ch. 396, L. 1971; R.C.M. 1947, 75-8902.

20-25-603. Teacher instruction — course required of education students. All units of the Montana university system and all private colleges and universities in Montana that offer any degree in education shall require that any person who receives any degree in education from that unit, private college, or private university after December 31, 1972, must have successfully completed a course in health education to include drug and alcohol education and abuse prior to being awarded his degree.

History: En. Sec. 3, Ch. 396, L. 1971; R.C.M. 1947, 75-8903.

20-25-604. Department in advisory capacity. The department of health and environmental sciences shall act in an advisory capacity in establishing all courses required under this part, and said courses shall be established only after consultation with and advice by the department.

History: En. Sec. 5, Ch. 396, L. 1971; R.C.M. 1947, 75-8905.

Part 7
Work-Study Program

Part Cross-References

Student financial assistance, Title 20, ch. 26.

20-25-701. Definitions and purpose. (1) As used in this part, unless the context otherwise requires, the following definitions apply:

(a) "Institution" means any public institution of postsecondary education governed, supervised, or coordinated by the board of regents of higher education.

(b) "Student" means any Montana resident, as established by the board of regents of higher education, who has met the qualifications for enrollment as a full-time student at an institution or who is presently enrolled as a full-time student in good standing, as determined by the institution.

(2) It is the purpose of this part to help ensure that no resident of Montana be denied attendance at institutions governed, supervised, or coordinated by the board of regents of higher education because of financial barriers and further to provide low-cost supplemental assistance for all governing units within Montana. The legislature intends that any Montana resident wishing to gain admittance to such institutions in Montana, within necessary budgetary limitations as provided by law, shall be allowed the opportunity to earn in part or in total sufficient money to pay the costs accompanying such attendance through employment by state and local governing units and certain public interest organizations.

History: En. 75-9101, 75-9102 by Secs. 1, 2, Ch. 307, L. 1974; R.C.M. 1947, 75-9101, 75-9102.

20-25-702. Montana work-study program. The Montana work-study program is hereby established to be administered by the board of regents of higher education as provided by this part.

History: En. 75-9103 by Sec. 3, Ch. 307, L. 1974; R.C.M. 1947, 75-9103.

20-25-703. Limitation on use of funds. No less than 70% of the funds allocated to the program shall be used to provide job opportunities for students with demonstrated financial need. The remainder of the funds allocated to this program may be used to provide job opportunities on a basis other than financial need. Such other bases include but are not limited to:

(1) laboratory, teaching, and tutorial assistantships requiring particular skills; and

(2) cases in which a student's family cannot demonstrate financial need but in which the student has a desire to contribute toward his education through employment.

History: En. 75-9104 by Sec. 4, Ch. 307, L. 1974; R.C.M. 1947, 75-9104.

20-25-704. Funds supplemental to other funds. All funds allocated through this program are supplemental in nature and are not meant to replace existing federal and state student financial assistance funds or any other funds that would otherwise be appropriated for student assistance.

History: En. 75-9105 by Sec. 5, Ch. 307, L. 1974; R.C.M. 1947, 75-9105.

20-25-705. Administration. The board of regents of higher education shall promulgate rules for the allocation of program funds among the institutions.

History: En. 75-9106 by Sec. 6, Ch. 307, L. 1974; R.C.M. 1947, 75-9106.

Cross-References

Rulemaking power of regents not subject to Montana Administrative Procedure Act, 2-4-102.

20-25-706. Eligibility. Any local governing body; state or local administrative agency, department, board, commission; judicial, legislative, or other governmental unit; or nonprofit private organization is eligible to employ Montana students under the program as determined by the board of regents of higher education and within the funding limitations of the program, which eligibility:

(1) will not result in the displacement of employed workers or impair existing contracts for services;

(2) will not involve any partisan or nonpartisan political activity associated with a candidate or contending group or faction in an election for public or party office;

(3) will not involve the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place of worship; and

(4) in the case of nonprofit organizations other than governmental units, will result in employment which is in the general public interest rather than in the interest of a particular group.

History: En. 75-9107 by Sec. 7, Ch. 307, L. 1974; R.C.M. 1947, 75-9107; amd. Sec. 13, Ch. 384, L. 1979.

20-25-707. Antidiscrimination. No employer is eligible to employ any person under this program if the employer practices discrimination in employment against any individual because of race, creed, religion, color, political ideas, sex, age, marital status, physical or mental handicap, ancestry, or national origin.

History: En. 75-9108 by Sec. 8, Ch. 307, L. 1974; amd. Sec. 36, Ch. 266, L. 1977; R.C.M. 1947, 75-9108.

Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Illegal discrimination, Title 49, ch. 2.

Governmental Code of Fair Practices, Title 49, ch. 3.

Rights of the handicapped, Title 49, ch. 4.

20-25-708. Approval of salaries. The salaries paid to students employed under this program and the number of hours each student works shall be approved by institution officers administering the program, subject to guidelines promulgated by the board of regents of higher education; provided that in no case will any student employed under the program be paid less than the minimum wage as provided by law.

History: En. 75-9109 by Sec. 9, Ch. 307, L. 1974; R.C.M. 1947, 75-9109.

Cross-References

Minimum wages, Title 39, ch. 3, part 4.

20-25-709. Contributions from employers. Each employer must contribute toward the salary of each student employed under the program at a level determined by the board of regents of higher education but at a level no less than 30% of the student's hourly wage.

History: **En. 75-9110 by Sec. 10, Ch. 307, L. 1974; R.C.M. 1947, 75-9110.**

Part 8

Western Regional Higher Education Compact

20-25-801. Western Regional Higher Education Compact approved. The legislature of the state of Montana hereby approves, ratifies, and adopts the Western Regional Higher Education Compact approved by the western governors conference meeting at Denver, Colorado, on November 10, 1950, which compact is as follows:

WESTERN REGIONAL HIGHER EDUCATION COMPACT

ARTICLE I

(1) WHEREAS, the future of this nation and of the western states is dependent upon the quality of the education of its youth; and

(2) WHEREAS, many of the western states individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

(3) WHEREAS, it is believed that the western states, or groups of such states within the region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the region and of the students thereof;

(4) NOW, THEREFORE, the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming and the territories of Alaska and Hawaii do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this compact.

ARTICLE III

The compacting states and territories hereby create the western interstate commission for higher education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to sue and be sued and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

(1) The commission shall consist of three resident members from each compacting state or territory. At all times one commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

(2) The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

(3) The terms of each commissioner shall be 4 years; provided, however, that the first three commissioners shall be appointed as follows: one for 2 years, one for 3 years, and one for 4 years. Each commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

(1) Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

(2) One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

(3) Each compacting state and territory represented at any meeting of the commission is entitled to one vote.

ARTICLE VI

(1) The commission shall elect from its number a chairman and a vice-chairman and may appoint and, at its pleasure, dismiss or remove such officers, agents, and employees as may be required to carry out the purpose of this compact and shall fix and determine their duties, qualifications, and compensation, having due regard for the importance of the responsibilities involved.

(2) The commissioners shall serve without compensation but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

ARTICLE VII

(1) The commission shall adopt a seal and bylaws and shall adopt and promulgate rules and regulations for its management and control.

(2) The commission may elect such committees as it deems necessary for the carrying out of its functions.

(3) The commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time but in any event must meet at least once a year. The chairman may call such additional meetings and upon the request of a majority of the commis-

sioners of three or more compacting states or territories shall call additional meetings.

(4) The commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

(5) The commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the region.

(6) On or before January 15 of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

(7) The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or his designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The commission shall provide for an independent annual audit.

ARTICLE VIII

(1) It shall be the duty of the commission to enter into such contractual agreements with any institutions in the region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the commission to provide adequate service and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health, and veterinary medicine and may undertake similar activities in other professional and graduate fields.

(2) For this purpose the commission may enter into contractual agreements:

(a) with the governing authority of any educational institution in the region or with any compacting state or territory to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties; and

(b) with the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

(3) It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs, and the long-range effects of the compact on higher education and from time to time to prepare comprehensive reports on such research for presentation to the western governors' conference and to the legislatures of the compacting states and territories. In conducting such studies, the commission may confer with any national or regional planning body which may be established. The commission shall draft and recommend to the governors of the various compacting states and territories uniform legislation dealing with problems of higher education in the region.

(4) For the purpose of this compact the word "region" shall be construed to mean the geographical limits of the several compacting states and territories.

ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and territories.

ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska, and Hawaii have duly adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until 2 years after written notice thereof by the governor of the withdrawing state or territory, accompanied by a certified copy of the requisite legislative action, is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the 2-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

ARTICLE XII

(1) If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges, and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

(2) Unless such default shall be remedied within a period of 2 years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

(3) Any such defaulting state may be reinstated by:

(a) performing all acts and obligations upon which it has heretofore defaulted; and

(b) application to and the approval by a majority vote of the commission.

History: En. Sec. 1, Ch. 216, L. 1951; R.C.M. 1947, 75-4901.

20-25-802. Effective date — notice of approval. Said compact shall become operative and binding at the time provided and in accordance with Article X of said compact. The governor of Montana shall give notice of the approval, ratification, and adoption of said compact by the 32nd legislative assembly of the state of Montana to the governors of each of the states and territories named in said Article X of said compact. The governors shall have power to appoint the commissioners for which provision is made in the compact, and said commissioners shall have the power and authority specified in said compact and such other power and authority as may hereafter be prescribed by law.

History: En. Sec. 2, Ch. 216, L. 1951; R.C.M. 1947, 75-4902.

20-25-803. Authority of western interstate commission for higher education to make agreements for placement of students. The western interstate commission for higher education is authorized to act on behalf of this state in making arrangements for the placement of students in institutions and programs of higher learning outside the states which are parties to the compact for establishing the commission. For that purpose, the commission may negotiate and enter into arrangements and contracts with this state or any appropriate agency thereof, with public and private educational institutions and agencies, and with states and other governmental entities. Such arrangements and contracts may provide for the obtaining of one or more places for students on either a special or continuing basis, the payment of partial or full tuition and other charges, and the furnishing of reciprocal, compensating, or other advantages and benefits in support of the educational program involved.

History: En. Sec. 1, Ch. 128, L. 1971; R.C.M. 1947, 75-4903.

Cross-References

Power of community college board of trustees to enter into agreements with Commission, 20-15-225.

20-25-804. Form and contents of agreements. The authority conferred by 20-25-803 shall be exercised only pursuant to written agreement between an agency of this state having responsibility for or duties with respect to programs for assisting residents of this state to obtain higher education. Any such agreements shall include provisions for the payment of tuition and any other costs, and no such agreement shall be made which commits this state or any agency or officer thereof to any obligation for which funds have not been appropriated or otherwise made available in accordance with law.

History: En. Sec. 2, Ch. 128, L. 1971; R.C.M. 1947, 75-4904.

Cross-References

Appropriation and disbursement of money from treasury, 17-8-101.

Limit on expenditures, 17-8-103.

20-25-805. State obligations or rights under compact not altered. Nothing contained in this chapter shall be construed to alter any of the obligations or restrict or impair any rights which this state may have under the compact establishing the commission.

History: En. Sec. 3, Ch. 128, L. 1971; R.C.M. 1947, 75-4905.

Cross-References

Impairment of contracts prohibited, Art. II, sec. 31, Mont. Const.

20-25-806. Appointment of commissioners to the western interstate commission for higher education. (1) In making the appointments of commissioners provided for in 20-25-801, the governor shall appoint three members as follows:

(a) one member who is an educator engaged in the field of higher education in Montana;

(b) one member who is engaged in a professional occupation; and

(c) one member who is a legislator.

(2) The term of each commissioner is 4 years as provided in the compact. The legislator appointed shall serve until the expiration of his appointment, even though his legislative term may have ended.

History: En. Sec. 1, Ch. 130, L. 1979.

CHAPTER 26

STUDENT FINANCIAL ASSISTANCE

Part 1 — Resident Student Assistance General Provisions

20-26-101. Short title.
20-26-102. Purpose.
20-26-103. Definitions.
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20-26-1407. Montana student volunteer program committee — terms of office.
20-26-1408. Term of office.
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Part 15 — Rural Physician Incentive Program

20-26-1501. Rural physician incentive trust fund.
20-26-1502. Fee assessments — deposits.
20-26-1503. Use of rural physician incentive trust fund.

Chapter Cross-References

Work-study program, Title 20, ch. 25, part 7.

Part 1

Resident Student Assistance General Provisions

20-26-101. Short title. Parts 1 and 2 may be cited as "The Montana Resident Student Financial Assistance Program".

History: En. 75-9401 by Sec. 1, Ch. 515, L. 1977; R.C.M. 1947, 75-9401.

20-26-102. Purpose. The purpose of parts 1 and 2 is to establish a program to provide financial assistance to resident Montana postsecondary students.

History: En. 75-9402 by Sec. 2, Ch. 515, L. 1977; R.C.M. 1947, 75-9402.

20-26-103. Definitions. As used in parts 1 and 2, the following definitions apply:

(1) "Postsecondary institution" includes the units of the university system and any postsecondary institution accredited or licensed under chapter 30 of this title.

(2) "Program advisory council" means the guaranteed student loan advisory council created by 2-15-1520.

(3) "Resident student" means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana.

History: (1), (2)En. 75-9403 by Sec. 3, Ch. 515, L. 1977; Sec. 75-9403, R.C.M. 1947; (3)En. by Code Commissioner, 1979; R.C.M. 1947, 75-9403; amd. Sec. 7, Ch. 21, L. 1985.

Cross-References

Rules for determining residence, 1-1-215.

20-26-104. Resident student financial assistance program created. There is a resident student financial assistance program administered by the commissioner of higher education in consultation with the program advisory council.

History: En. 75-9404 by Sec. 4, Ch. 515, L. 1977; R.C.M. 1947, 75-9404.

Part 2

Resident Student Assistance Administration of Program

Part Cross-References

Appointment of Commissioner of Higher Education, 2-15-1506.

Duties of Commissioner of Higher Education, 20-2-131.

20-26-201. Duties of commissioner of higher education relative to program. In consultation with the program advisory council, the commissioner of higher education shall:

(1) adopt rules to administer the resident student financial assistance program, including the establishment of criteria for student eligibility which shall consider financial need;

(2) determine the amount of individual grants;

(3) establish procedures for fiscal control, fund accounting, and necessary reports; and

(4) apply for, receive, and administer federal and private moneys.

History: En. 75-9406 by Sec. 6, Ch. 515, L. 1977; R.C.M. 1947, 75-9406.

Cross-References

Regents' rulemaking power not subject to Montana Administrative Procedure Act, 2-4-102.

20-26-202. Administrative costs. Administration costs not provided by the federal grant that are attributable to parts 1 and 2 shall be negotiated and charged to the individual participants.

History: En. 75-9408 by Sec. 8, Ch. 515, L. 1977; R.C.M. 1947, 75-9408.

20-26-203. Deposit of moneys. Funds received by the commissioner of higher education for the resident student financial assistance program, including funds for the administration of parts 1 and 2, shall be deposited in the state treasury.

History: En. 75-9407 by Sec. 7, Ch. 515, L. 1977; R.C.M. 1947, 75-9407.

Cross-References

Deposits and investments, Title 17, ch. 6.

Parts 3 through 10 reserved

Part 11

Guaranteed Student Loan Program

20-26-1101. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of regents of higher education.

(2) "Corporation" means the corporation designated by the board to administer student loans.

(3) "Council" means the guaranteed student loan advisory council established in 2-15-1520.

(4) "Eligible educational institution" means any institution approved by the United States commissioner of education as eligible to participate in the

guaranteed student loan program pursuant to Title IV of the Higher Education Act of 1965, as amended.

(5) "Guaranteed student loan program" means the program established by the board pursuant to this part.

History: En. Sec. 3, Ch. 691, L. 1979; amd. Sec. 1, Ch. 205, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 205 inserted definition of corporation; and deleted definition of nonprofit corporation.

Cross-References

Nonprofit corporations, Title 35, ch. 2.

20-26-1102. Authorization to establish guaranteed student loan program. (1) The board may establish and contract for the operation of a guaranteed student loan program for the purpose of making available to students improved opportunities for education by guaranteeing loans in accordance with applicable federal law to persons attending or accepted for enrollment at an eligible educational institution.

(2) The board is designated as the state representative for receiving federal, public, or private money that is now or will be made available under any act of the congress of the United States or otherwise for purposes of the guaranteed student loan program.

History: En. Sec. 4, Ch. 691, L. 1979.

20-26-1103. Duties of the board. In discharging its duties in relation to the guaranteed student loan program, the board shall:

(1) act as guarantor on loans of money, upon terms and conditions as the board may prescribe, to assist persons attending or accepted for enrollment at an eligible educational institution to meet their educational expenses;

(2) approve financial or credit institutions, insurance companies, or other lenders as eligible lenders upon their meeting the standards established by the board for making guaranteed student loans;

(3) incur and discharge debts, including defaulted loan obligations that have been guaranteed by the board;

(4) make and execute agreements, contracts, and other instruments with any public or private person or agency, including the United States commissioner of education, for the administration of the guaranteed student loan program;

(5) contract with a corporation for the operation of the guaranteed student loan program to provide loan approval processing, essential and special loan servicing, preclaims assistance, claim processing and collections, and other services that would promote lender participation and loan availability to students;

(6) perform any other duties necessary for the administration of the guaranteed student loan program.

History: En. Sec. 5, Ch. 691, L. 1979; amd. Sec. 2, Ch. 205, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 205 near beginning of (5), before "corporation", deleted "nonprofit"; and made minor changes in style.

20-26-1104. Student loan advisory council — duties. The council shall:

(1) advise the board on policies, rules, and procedures necessary for accomplishing the provisions of this part;

(2) make recommendations to the board concerning the designation of a corporation;

(3) monitor the corporation to assure that both the students and lenders are adequately served; and

(4) advise on the adequacy and proper execution of any contracts entered into between the board and the corporation.

History: En. Sec. 6, Ch. 691, L. 1979; amd. Sec. 3, Ch. 205, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 205 in (2), (3), and (4), before "corporation", deleted "nonprofit".

20-26-1105. Guaranteed student loan account. (1) There is a guaranteed student loan account within the federal special revenue fund provided for in 17-2-102.

(2) The board shall credit to the account established in subsection (1) all money designated for the guaranteed student loan program by the United States or by any other public or private source. All expenses incurred by the board in connection with the guaranteed student loan program, including principal and interest payments required because of loan defaults, must be charged against the account.

(3) Money in the account not needed to meet current obligations of the board in the exercise of its responsibilities as guarantor, as provided for in this part, must be invested in accordance with the provisions of Title 17, chapter 6. Interest proceeds must be credited to the account.

(4) Money on deposit in the guaranteed student loan account shall not revert to the general fund at the close of any fiscal year.

History: En. Sec. 7, Ch. 691, L. 1979; amd. Sec. 20, Ch. 281, L. 1983; amd. Sec. 1, Ch. 134, L. 1987; amd. Sec. 4, Ch. 700, L. 1989.

20-26-1106. No state obligation. The legislature is not obligated to appropriate any money to pay for guaranteed student loan defaults. For the purpose of the guaranteed student loan program, neither the board nor the nonprofit corporation may obligate the credit of the state.

History: En. Sec. 8, Ch. 691, L. 1979.

Cross-References

Appropriation for private educational purpose prohibited, Art. V, sec. 11, Mont. Const.

20-26-1107. Dissolution — disposition of money. (1) The guaranteed student loan program may not be dissolved until all contractual obligations have been satisfied and all loans guaranteed have been paid by the borrower or, if in default, by the board.

(2) Upon dissolution of the program or the cessation of the program's activities, all property and money of the board relating to the guaranteed student loan program not refundable to the federal government as provided by law vest in the state and shall be credited to the general fund.

History: En. Sec. 9, Ch. 691, L. 1979.

20-26-1108 through 20-26-1110 reserved.

20-26-1111. Access to governmental records. The board may request from any state or local government agency or officer information that would aid in the collection of delinquent student loans. All state and local government officials and employees shall cooperate with the board in supplying the information and shall on request supply the board with any relevant information regarding the location of the debtor. The board shall use the information only for purposes related to the collection of student loans or other educational debts.

History: En. Sec. 1, Ch. 358, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

Records of university student, 20-25-515, 20-25-516.

Vital statistics information, Title 50, ch. 15.

Confidentiality of vehicle accident reports, 61-7-114.

Parts 12 and 13 reserved

Part 14

Heritage of Montana Enterprise Act

Part Compiler's Comments

Effective Date: Section 13, Ch. 526, L. 1993, provided: "[This act] [20-26-1401 through 20-26-1404 and 20-26-1407 through 20-26-1411] is effective on passage and approval." Approved April 24, 1993.

20-26-1401. Short title. This part may be cited as the "Heritage of Montana Enterprise Act".

History: En. Sec. 1, Ch. 526, L. 1993.

20-26-1402. Purposes — program. (1) The purposes of this part are to facilitate public service and to encourage Montana's college students to remain in Montana to pursue their education. These purposes are addressed by establishing a fund to solicit, collect, and administer money gathered from private and corporate donors, foundations, and the federal government to be used to provide tuition vouchers or partial student loan repayments and to provide living expense allowances to individuals who perform full-time volunteer work for private nonprofit human and social service organizations in Montana's communities.

(2) To carry out the purposes provided in subsection (1), there is created a Montana student volunteer program. The program must commence in the summer of 1994.

History: En. Sec. 2, Ch. 526, L. 1993.

20-26-1403. Montana student volunteer program fund. There is a Montana student volunteer program trust fund account in the state special revenue fund. Funds deposited in the account must be used solely for the purposes of the Montana student volunteer program. The funds in the account are statutorily appropriated, as provided in 17-7-502, to the Montana student volunteer program committee.

History: En. Sec. 3, Ch. 526, L. 1993.

20-26-1404. Gifts and grants to program. The Montana student volunteer program committee may accept contributions, gifts, and grants, in money or otherwise, on behalf of the Montana student volunteer program. Upon receipt, contributions, monetary gifts, and grants must be deposited into the Montana student volunteer program trust fund account established by 20-26-1403.

History: En. Sec. 4, Ch. 526, L. 1993.

20-26-1405 and 20-26-1406 reserved.

20-26-1407. Montana student volunteer program committee — terms of office. (1) There is a Montana student volunteer program committee.

(2) The committee consists of seven members, appointed as follows:

(a) a representative of the office of community service, appointed by the governor;

(b) a representative of the department of family services, appointed by the director;

(c) a member of the board of regents, appointed by majority vote of the board;

(d) a representative from either a participating or an eligible worksite, appointed by the governor;

(e) a full-time student enrolled in any unit of the Montana university system, appointed by the university system student body governments; and

(f) two representatives of the private sector, appointed by the governor.

(3) At least one member of the committee must be a Native American.

(4) A vacancy on the committee is for the unexpired term and must be filled in the same manner as the original appointment.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet at least twice yearly, once in July and once in January, beginning in July 1993. Additional meetings may be called by the presiding officer or the vice presiding officer.

(7) Members of the board serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

History: En. Sec. 5, Ch. 526, L. 1993; amd. Sec. 12, Ch. 526, L. 1993.

Compiler's Comments

Code Commissioner Correction: Pursuant to sec. 84, Ch. 10, L. 1993, the Code Commissioner substituted "governor" for "director" to reflect the appointing authority for the Office of Community Service.

Transition: Section 10, Ch. 526, L. 1993, was a transition section that provided: "In order to provide for staggered terms, members initially appointed to the Montana student volunteer program committee pursuant to [section 5(2)(a) through (2)(c)] [20-26-1407(2)(a) through (2)(c)] shall hold office for a period of 3 years."

Coordination Instruction: Section 12, Ch. 526, L. 1993, was a coordination instruction that provided: "If House Bill No. 660 is passed and approved and if it creates an office of community service, then all references to the department of commerce in [this act] are changed to references to the office of community service." House Bill No. 660 was approved April 24, 1993, as Ch. 534, L. 1993.

20-26-1408. Term of office. Committee members serve staggered 2-year terms beginning on January 1 of the year following their appointment.

History: En. Sec. 6, Ch. 526, L. 1993.

20-26-1409. Powers and duties of committee. (1) The Montana student volunteer program committee shall solicit donations from private and corporate donors, foundations, the federal government, and any other funding sources it considers appropriate to fund the program's initial planning and organization, as well as its operation. Donations must be deposited in the Montana student volunteer program trust fund account.

(2) The committee shall review applications for prospective worksites. Worksite applicants must be designated as eligible or ineligible. Eligible worksites must, at minimum, be private, nonprofit, nongovernmental, and nonsectarian human or social service agencies whose principal mission is to provide free or at-cost services to underprivileged individuals and families in Montana's communities. In determining the eligibility of worksites, the committee shall consider each worksite's potential for:

(a) enabling volunteers to perform meaningful and worthwhile work of value to the community and the state; and

(b) providing a meaningful and worthwhile experience to the volunteers, including evidence of the worksite's ability and willingness to provide supervision, support, guidance, and evaluation to volunteers. The committee shall maintain and publish a record of all eligible worksites.

(3) The committee shall review and accept or reject applications for participation in the program. To be eligible a candidate shall, at minimum:

(a) be a Montana resident;

(b) have completed at least 2 years of postsecondary education;

(c) be 18 years of age or older prior to commencement of actual volunteer service;

(d) be selected by an eligible worksite; and

(e) demonstrate the interest, willingness, and ability necessary to perform the services required by the prospective worksite.

(4) Eligible worksites may conduct interviews of potential volunteers and, in accordance with criteria submitted to the committee, select volunteers that will, in their estimation, best suit their needs.

History: En. Sec. 7, Ch. 526, L. 1993.

20-26-1410. Determination of awards. (1) Each volunteer must receive a periodic allowance to help defray living expenses incurred during the volunteer assignment. The amounts to which volunteers are entitled under this section must be determined and adjusted periodically by the committee.

(2) In addition, each volunteer may choose:

(a) to receive a tuition voucher; or

(b) to have a portion of outstanding student loans repaid by the program in an amount equal to the value of the tuition voucher to which the volunteer would be entitled.

History: En. Sec. 8, Ch. 526, L. 1993.

20-26-1411. Rulemaking authority. The office of community service, in consultation with the Montana student volunteer program committee, shall adopt rules to implement 20-26-1409 and 20-26-1410.

History: En. Sec. 9, Ch. 526, L. 1993; amd. Sec. 12, Ch. 526, L. 1993.

Compiler's Comments

Coordination Instruction: Section 12, Ch. 526, L. 1993, was a coordination instruction that provided: "If House Bill No. 660 is passed and approved and if it creates an office of community service, then all references to the department of commerce in [this act] are changed to references to the office of community service." House Bill No. 660 was approved April 24, 1993, as Ch. 534, L. 1993.

Part 15

Rural Physician Incentive Program

20-26-1501. Rural physician incentive trust fund. There is a rural physician incentive expendable trust fund in the state treasury. Money is payable into the fund as provided in 20-26-1502. Income and earnings on the fund must be redeposited in the fund. The fund must be administered by the board of regents of higher education as provided in this part.

History: En. Sec. 1, Ch. 394, L. 1991.

20-26-1502. Fee assessments — deposits. The board of regents of higher education may assess a fee to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for a professional education program in those fields, as those fields are defined by the compact. The fee may not exceed an amount equal to 8% of the annual individual medicine support fee paid by the state pursuant to 20-25-804. The fee must be assessed by the board of regents and deposited in the rural physician incentive trust fund established in 20-26-1501.

History: En. Sec. 2, Ch. 394, L. 1991.

20-26-1503. Use of rural physician incentive trust fund. (1) The rural physician incentive trust fund is statutorily appropriated, as provided in 17-7-502, to the board of regents of higher education to be used to pay:

(a) the educational debts of rural physicians who practice in medically underserved areas of the state that demonstrate a need for assistance in physician recruitment; and

(b) the expenses of administering the rural physician incentive program. The expenses of administering the program may not exceed 10% of the annual fees assessed pursuant to 20-26-1502.

(2) The board of regents shall establish procedures for determining the areas of the state that qualify for assistance in physician recruitment. An eligible area must demonstrate that a physician shortage exists or that the area has been unsuccessful in recruiting physicians by other mechanisms.

(3) A physician from an area determined to be eligible under subsection (2) may apply to the board of regents for payment of an educational debt directly related to a professional school, as provided in subsection (4). Physicians who have paid the fee authorized in 20-26-1502 must be given a preference over other applicants. To receive the educational debt payments, the physician shall sign an annual contract with the board of regents. The contract must provide that the physician is liable for the payments if the physician ceases to practice in the eligible area during the contract period.

(4) The maximum amount of educational debt payment that a rural physician may receive is $30,000 over a 4-year period or a proportionally reduced amount for a shorter period.

(5) The amount contractually committed in a year may not exceed the annual amount deposited in the rural physician incentive trust fund.

History: En. Sec. 3, Ch. 394, L. 1991.

CHAPTERS 27 THROUGH 29

RESERVED

CHAPTER 30

POSTSECONDARY EDUCATIONAL INSTITUTIONS

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Part 1

General Provisions

20-30-101. Legislative purpose and definitions. (1) It is the policy of this state to encourage and enable its citizens to obtain and receive an education commensurate with their abilities and desires. It is recognized that institutions offering postsecondary educational, vocational, and professional instruction perform a useful and necessary service to the citizens of the state in achieving this objective. It is found that certain institutions have either by unscrupulous, unfair, and deceptive practices or through substandard instruction deprived the citizens of this state of educational opportunity and subjected them to financial loss. The actions of such institutions also reflect unfavorably upon the reputable postsecondary institutions which are in the great majority. Thus it is the purpose of this chapter to provide for the protection, education, and welfare of the citizens of this state.

(2) As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Advisory council" or "council" means the advisory council created by 2-15-1804.

(b) "Agent" means any person owning any interest in, employed by, or representing a postsecondary educational institution in this or another state who, by solicitation in any form made in this state, seeks to enroll or enrolls a resident of this state in such postsecondary institution or who offers to award educational credentials on behalf of such institution for remuneration or who holds himself out to the residents of this state as representing a postsecondary institution for any such purpose.

(c) "Application" means either an application for the initial issuance of a license or permit or for the renewal of a license or permit.

(d) "Department" means the department of commerce.

(e) "Education or educational services" means a class, course, or program of training, instruction, or study.

(f) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to mean enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for education through a postsecondary educational institution.

(g) "Grant" means sell, award, confer, bestow, or give.

(h) "Institution" means an academic, vocational, technical, home study, business, professional, or other school, college, or university or any person, association, or corporation offering educational credentials or educational services but does not include any institution established and maintained under the laws of this state.

(i) "License" means written approval issued by the department to operate or to contract to operate a postsecondary institution in this state.

(j) "Offer" means, in addition to its usual meaning, to advertise, publicize, solicit, or encourage any person, directly or indirectly, in any form, to perform the act described.

(k) "Operate" means to establish and maintain any facility in this state for the purpose described and includes a contract with any person, association, or corporation to establish and maintain such facility.

(l) "Permit" means written approval issued by the department to any person to act as an agent for a postsecondary educational institution.

(m) "Postsecondary education" means the education or educational services offered to persons who have completed or terminated their secondary education or who are beyond the age of compulsory school attendance, for the attainment of academic, professional, or vocational objectives.

History: En. Secs. 1, 2, Ch. 296, L. 1974; Secs. 75-9201, 75-9202, R.C.M. 1947; (2)(a)En. by Code Commissioner, 1979; R.C.M. 1947, 75-9201, 75-9202; amd. Sec. 1, Ch. 94, L. 1981; amd. Sec. 2, Ch. 274, L. 1981.

20-30-102. Exemptions. The following are exempt from the provisions of this chapter:

(1) any program or course of instruction of an institution accredited by a national or regional accrediting agency recognized by the board of regents of higher education and notification of such recognition having been given to the department by the board;

(2) education sponsored by a trade, business, professional, or fraternal organization principally for the membership of the organization or offered without the payment of fees, unless such education is offered as leading toward educational credentials;

(3) avocational or recreational education and institutions offering such education exclusively;

(4) education offered by charitable or religious institutions, organizations, or agencies unless such education is offered as leading toward educational credentials;

(5) institutions possessing a valid certificate issued by the federal aviation agency;

(6) schools of cosmetology possessing a valid certificate of registration issued under the provisions of Title 37, chapter 31.

History: En. 75-9203 by Sec. 3, Ch. 296, L. 1974; amd. Sec. 1, Ch. 211, L. 1975; R.C.M. 1947, 75-9203; amd. Sec. 1, Ch. 469, L. 1979; amd. Sec. 2, Ch. 94, L. 1981.

20-30-103. Administration. The department shall administer this chapter. To effect the purposes of this chapter, the department may request from any agency of the state and every agency shall provide such information as will enable the department to exercise properly its powers and perform its duties. Nothing herein shall be construed to interfere with the purpose and function of any agency of the state.

History: En. 75-9204 by Sec. 4, Ch. 296, L. 1974; R.C.M. 1947, 75-9204.

20-30-104. Advisory council — duties — organization — compensation. (1) The advisory council shall advise the department of policies, rules, and procedures necessary for carrying out the provisions of this chapter.

(2) The council's organization, meetings, quorum, and compensation are as provided in 2-15-122.

History: En. 75-9205 by Sec. 5, Ch. 296, L. 1974; R.C.M. 1947, 75-9205(2), (3).

Cross-References

Proprietary Postsecondary Educational Advisory Council created, 2-15-1804.

20-30-105. Preservation of records. (1) In the event any postsecondary educational institution now or hereafter located in this state proposes to discontinue its operation, the chief administrative officer, by whatever title designated, of such institution shall cause to be filed with the department the original or legible true copies of all such academic records of such institution as may be specified by the department. Such records shall include, at a minimum, such academic information as is customarily required by colleges when considering students for transfer or advanced study and, as a separate document, the academic record of each former student.

(2) In the event it appears to the department that any such records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable, the department may seize and take possession of such records on its own motion and without order of court. The department shall maintain or cause to be maintained a permanent file of such records coming into its possession.

History: En. 75-9218 by Sec. 18, Ch. 296, L. 1974; R.C.M. 1947, 75-9218.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

Part 2

Administration by Department of Commerce

20-30-201. Powers and duties of department. To administer this chapter, the department shall have the following powers and duties:

(1) to establish minimum criteria, in consultation with the commissioner of higher education, conforming to the minimum standards in 20-30-202, which applicants for a license or permit shall satisfy before a license or permit shall be issued, provided the requirements of the Administrative Procedure Act for rulemaking procedures have been complied with;

(2) to receive, to investigate as it may deem necessary, and to act upon applications for a license or permit;

(3) to maintain a list of licensed institutions, of persons possessing permits, and of accrediting agencies recognized under 20-30-102(1), provided that an institution and its agent exempt from this chapter may be included in such list upon the filing of an affidavit of exemption;

(4) to negotiate and enter into reciprocal interstate agreements with like agencies in other states if such agreements are or will affect the purposes of this chapter, provided that nothing contained in such agreement shall be construed as limiting the powers and duties of the department with respect to investigating or acting upon any application for a license or for a permit or with respect to the enforcement of any provision of this chapter or regulations adopted hereunder;

(5) to receive and cause to be maintained for a reasonable length of time, not less than 10 years, copies of academic records pursuant to 20-30-105;

(6) to establish, with the advice of the advisory council, rules and procedures necessary for the implementation of this chapter which shall have the force of law, provided the requirements of the Montana Administrative Procedure Act for rulemaking procedures have been complied with, and to hold hearings as it may deem advisable in developing such rules and procedures or to aid in any investigation or inquiry; and

(7) to investigate as it may deem necessary, on its own motion or on the filing of a verified complaint filed with it, any institution or person subject to or reasonably believed by the department to be subject to the provisions of this chapter; to subpoena any persons or documents pertaining to such

investigation, which subpoenas shall be enforceable in a district court of this state; to require answers in writing under oath to questions or interrogatories propounded by the department; and to administer an oath or affirmation to any person in connection with any investigation.

History: En. 75-9206 by Sec. 6, Ch. 296, L. 1974; R.C.M. 1947, 75-9206.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Montana Administrative Procedure Act, Title 2, ch. 4.

Power of agencies to issue subpoenas, 2-4-104.

Power of hearing officer to issue subpoenas, 2-4-611.

Public records, Title 2, ch. 6.

Prohibition on distribution or sale of mailing lists, 2-6-109.

Preservation of records, Title 22, ch. 3, part 2.

Depositions upon written questions, Rule 31, M.R.Civ.P. (see Title 25, ch. 20).

Interrogatories, Rule 33, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Affidavits, Title 26, ch. 1, part 10.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Perjury, 45-7-201.

False swearing, 45-7-202.

20-30-202. Minimum standards. (1) In establishing the criteria required by 20-30-201, the department shall observe and shall require compliance with the following minimum standards:

(a) A postsecondary educational institution must be maintained and operated or, in the case of a new institution, it must demonstrate that it can be maintained and operated in compliance with the following minimum standards:

(i) that the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

(ii) that the institution has adequate space, equipment, instructional materials, and personnel to provide education of good quality;

(iii) that the education and experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study;

(iv) that the institution provides students and other interested persons with a catalog or brochure containing information describing the programs offered; program objectives; length of program; schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study; cancellation and refund policies; and such other material facts concerning the institution and program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures required by the department, and that such information is provided to prospective students prior to enrollment;

(v) that upon satisfactory completion of training, the student is given appropriate educational credentials by the institution, indicating that the course or courses of instruction or study have been satisfactorily completed;

(vi) that adequate records are maintained by the institution to show attendance, programs, or grades and that satisfactory standards are enforced relating to attendance, progress, and performance;

(vii) that the institution is maintained and operated in compliance with all pertinent ordinances and laws relating to the safety and health of all persons upon the premises;

(viii) that the institution is financially sound and capable of fulfilling its commitments to students;

(ix) that neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices of any kind which are false, deceptive, misleading, or unfair;

(x) that the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors are of good reputation and character; and

(xi) that the institution has a fair and equitable cancellation and refund policy.

(b) An applicant for a permit to act as agent shall be an individual of good reputation and character and shall represent only a postsecondary educational institution which meets the minimum standards established in this section and the criteria established under 20-30-201.

(c) No postsecondary educational institution may use the term "university" or "college" without authorization to do so from the department in consultation with the commissioner of higher education; provided that any institution subject to this chapter located within this state which used either term on January 1, 1974, may continue to do so by filing an affidavit to that effect with the department prior to January 1, 1975.

(2) Accreditation by national or regional accrediting agencies recognized by the United States office of education may be accepted by the department as evidence of compliance with the minimum standards established hereunder and the criteria established under 20-30-201, provided the department, after conferring with the commissioner of higher education, may require such further evidence and make such further investigation as in its judgment may be necessary. Accreditation by a recognized, specialized accrediting agency may be accepted as evidence of such compliance only as to the portion or program of an institution accredited by such agency if the institution as a whole is not accredited.

History: En. 75-9207 by Sec. 7, Ch. 296, L. 1974; R.C.M. 1947, 75-9207.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Perjury, 45-7-201.

False swearing, 45-7-202.

20-30-203. Acts prohibited without permit or license. No person, group, association, or corporation, alone or in concert with others, shall:

(1) operate in this state a postsecondary educational institution unless the institution is exempt from the provisions of this chapter or is licensed by the department;

(2) offer instruction in, enrollment in, or grant of educational credentials as or through an agent by a postsecondary educational institution not exempted from this chapter, whether within or without the state, unless the agent possesses a currently valid permit as required by this chapter;

(3) accept or receive contracts or applications for enrollment from an agent unless the agent possesses a currently valid permit as required by this chapter;

(4) offer education or educational services or educate or provide educational service, offer to enroll or enroll, contract or offer to contract with any person for such purpose or offer to grant, grant, or contract with any person for that purpose in this state unless the person, group, association, or corporation complies with the minimum standards in 20-30-202, the criteria established by the department, and the rules adopted by the department;

(5) act as an agent for a postsecondary educational institution unless currently possessing a valid permit from the department.

History: En. 75-9208 by Sec. 8, Ch. 296, L. 1974; R.C.M. 1947, 75-9208.

Cross-References

Penalty for violation of school laws, 20-1-207.

Part 3

Licenses and Permits

Part Cross-References

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

20-30-301. License to operate institution. (1) Each postsecondary educational institution not exempted from this chapter intending to operate or presently operating in this state shall apply to the department for a license to operate. Application shall be made on forms prescribed by the department. Each application shall be accompanied by the most recent catalog or brochure published or intended to be published by the institution. The application also shall be accompanied by evidence of payment of the fees required by this chapter.

(2) After review of the application and any further information required by the department, any investigation of the application which the department may deem necessary or appropriate, and evidence of a surety bond as required by this chapter, the department shall either issue or not issue a license to operate a postsecondary educational institution. The license shall be nontransferable and may be upon such terms and conditions as the department may require.

(3) The license shall be in a form prescribed by the department and shall state in a clear and conspicuous manner at least the following information:

(a) date of issuance, effective date, and date of expiration;

(b) the name and address of the institution licensed;

(c) the authority for and conditions of approval; and

(d) any terms or conditions required by the department.

(4) No license shall be valid for more than 2 years and may be valid for a lesser period of time.

History: En. 75-9209 by Sec. 9, Ch. 296, L. 1974; R.C.M. 1947, 75-9209.

20-30-302. Permit to act as agent. (1) Each person intending to act in this state as an agent for a postsecondary institution not exempt from the provisions of this chapter shall make application to the department. Application shall be made on forms prescribed by the department. Each application shall be accompanied by evidence of payment of the fees required by this chapter and the sworn affidavits of three residents of this state as to the good character and reputation of the applicant and shall show the name and address of the institution which the applicant intends to represent.

(2) In the event the applicant intends to represent an institution not licensed to operate in this state, the application shall be accompanied by the information required of institutions applying for such a license.

(3) After review of the application and any further information required by the department, any investigation deemed necessary or appropriate, and evidence of a surety bond required by this chapter, the department shall issue or not issue the permit to the applicant. The permit shall be nontransferable and may be upon such terms and conditions as the department may require.

(4) The permit shall be in the form prescribed by the department and shall state in a clear and conspicuous manner at least the following information:

(a) the date of issuance, effective date, and date of expiration;

(b) the name and address of the agent;

(c) the name and address of the institution or institutions the agent may represent;

(d) the authority for and conditions of approval; and

(e) any terms or conditions required by the department.

(5) No permit shall be valid for more than 2 years and may be valid for a lesser period of time.

History: En. 75-9210 by Sec. 10, Ch. 296, L. 1974; R.C.M. 1947, 75-9210.

Cross-References

Oaths, Title 1, ch. 6.
Affidavits, Title 26, ch. 1, part 10.
Perjury, 45-7-201.
False swearing, 45-7-202.

20-30-303. Denial of application for license or permit. (1) If the department determines that an application is deficient under the criteria established for the issuance of a license or permit, the department shall notify the applicant in writing of that determination and the deficiencies.

(2) If the applicant requests and the request demonstrates to the department the applicant's intention and ability to remedy the deficiencies causing the denial of the license or permit, the department may grant the applicant a reasonable period of time to take such action.

(3) If a request under subsection (2) above is not made or a request is made and is denied or the period of time granted expires without remedy of the deficiencies, the application shall be denied. The department shall notify the applicant of the denial, the reasons therefor, and the opportunity of the applicant for a hearing before the department.

(4) In the event an application for a permit is denied, the department shall notify in writing the institution or institutions represented or to be represented by the applicant.

History: En. 75-9211 by Sec. 11, Ch. 296, L. 1974; R.C.M. 1947, 75-9211.

20-30-304. Revocation of license or permit. (1) If the department has reasonable cause to believe that a holder of a license or permit issued under any provision of this chapter has violated or is in violation of this chapter or criteria established under this chapter, the department may revoke the license or permit as provided.

(2) A decision respecting revocation of a license or permit shall be made after opportunity for hearing before the department. Matters concerning the revocation of licenses or permits, hearings, and judicial review will be handled as contested cases under the Administrative Procedure Act.

History: En. 75-9212 by Sec. 12, Ch. 296, L. 1974; amd. Sec. 2, Ch. 211, L. 1975; R.C.M. 1947, 75-9212.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

20-30-305. Bond required. (1) At the time application is made for license, the department may require the postsecondary educational institution making the application to file with the department a good and sufficient surety bond in such sum as may be determined by the department. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student or enrollee or his parent or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this chapter by the postsecondary educational institution and that the bonding company shall pay any final nonappealable judgment rendered by any court of this state having jurisdiction upon receipt of written notification thereof. Regardless of the number of years that the bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond. The bond shall be for 2 years or coterminous with the license.

(2) An application for a permit shall be accompanied by a good and sufficient surety bond in a penal sum of $1,000. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond may be in blanket form to cover more than one agent for a postsecondary educational institution, but it shall cover each agent for the institution in a penal sum of $1,000. The bond shall be conditioned to provide indemnification to any student, enrollee, or the parents or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this chapter by the agent and that the bonding company shall pay any final nonappealable judgment rendered by any court of this state having jurisdiction upon receipt of written notification thereof. Regardless of the number of years that the bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum thereof. The bond shall be for 2 years or coterminous with the permit.

(3) The surety bond to be filed hereunder shall cover the period of the license or the permit except when a surety is released. A surety on any bond filed under the provisions of this section may be released after the surety has served written notice to the department 40 days prior to the release. The release does not discharge or otherwise affect any claim filed by a student or enrollee or his parent or guardian for loss or damage resulting from any act or practice which is a violation of this act alleged to have occurred while the

bond was in effect or from an institution's ceasing operations during the term for which tuition has been paid while the bond was in force.

(4) A license for an institution to operate or a permit to an agent shall be suspended by operation of law when the institution or agent is no longer covered by a surety bond as required by this section; but the department shall cause the institution or an agent, or both, to receive at least 30 days' written notice prior to the release of the surety to the effect that the license or permit shall be suspended by operation of law until another surety bond is filed in the same manner and like amount as the bond being terminated.

History: En. 75-9216 by Sec. 16, Ch. 296, L. 1974; amd. Sec. 38, Ch. 266, L. 1977; R.C.M. 1947, 75-9216.

20-30-306. Fees. All fees collected pursuant to the provisions of this chapter shall be deposited in the general fund, and no fees collected under the provisions of this chapter shall be subject to refund. The fees to be collected by the department shall accompany an application for authorization to operate or for an agent's permit, in accordance with the following schedule:

(1) The initial application fee for a license shall be $50.

(2) The renewal fee for a license shall be $25.

(3) The initial fee for permit shall be $25.

(4) The renewal fee for permit shall be $10.

History: En. 75-9217 by Sec. 17, Ch. 296, L. 1974; R.C.M. 1947, 75-9217.

Part 4
Remedies and Enforcement

20-30-401. Civil relief. Any person claiming loss or damage as a result of any act or practice by a postsecondary institution or its agent, or both, which act or practice violates the criteria established by the department under 20-30-201 or the prohibitions in 20-30-203, may sue in a court of proper jurisdiction of this state the institution or the agent, or both, and their sureties for the amount of the damage or loss and if successful shall be awarded, in addition to damages, court costs and reasonable attorney's fees.

History: En. 75-9215 by Sec. 15, Ch. 296, L. 1974; amd. Sec. 37, Ch. 266, L. 1977; R.C.M. 1947, 75-9215.

Cross-References

Costs, Title 25, ch. 10.

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

20-30-402. Enforceability of notes and contracts. (1) If the person to whom educational services are to be rendered or furnished by a postsecondary educational institution is a resident of this state at the time any contract relating to payment for such services or any note, instrument, or other evidence of indebtedness relating thereto is entered into, the provisions of this section shall govern the rights of the parties to such contract or evidence of indebtedness. In such event, the following agreements entered into in connection with the contract or the giving of such evidence of indebtedness are invalid:

(a) that the law of another state shall apply;

(b) that the maker or any person liable on such contract or evidence of indebtedness consents to the jurisdiction of another state;

(c) that another person is authorized to confess judgment on such contract or evidence of indebtedness; and

(d) that fixes venue.

(2) No note, instrument, or other evidence of indebtedness or contract relating to payment for education or educational services shall be enforceable in the courts of this state by any postsecondary educational institution located in Montana unless the institution shall have received a license or by any postsecondary educational institution having an agent or agents in Montana unless any and all agents who enrolled or sought to enroll the person to whom such services were to be rendered, or to whom educational credentials were to be granted, had a permit at the time of their contact with such person.

(3) For the purposes of this section, "lending agency" means any postsecondary educational institution or any person, association, partnership, or corporation controlling, controlled by, or held in common ownership with such institution loaning money to such institution or students thereof.

(4) Any lending agency extending credit or loaning money to any person for tuition, fees, or any charges whatever of a postsecondary educational institution for educational or other services or facilities to be rendered or furnished by said institution shall cause any note, instrument, or other evidence of indebtedness taken in connection with such loan or extension of credit to be conspicuously marked on the face thereof, "student loan". In the event such lending agency fails to do so, it shall be liable for any loss or damage suffered or incurred by any subsequent assignee, transferee, or holder of such evidence of indebtedness on account of the absence of such notation.

(5) Notwithstanding the presence or absence of such notation and notwithstanding any agreement to the contrary, the lending agency making such loan or extending such credit and any transferee, assignee, or holder of such evidence of indebtedness shall be subject to all defenses and claims which could be asserted against the postsecondary educational institution which was to render or furnish such services or facilities by any party to said evidence of indebtedness or by the person to whom such services or facilities were to be rendered or furnished, up to the amount remaining to be paid thereon.

History: En. 75-9219 by Sec. 19, Ch. 296, L. 1974; R.C.M. 1947, 75-9219.

Cross-References

Rules for determining residence, 1-1-215.

20-30-403. Violations — criminal — penalty. Any person, group, or entity or any owner, officer, agent, or employee thereof who shall willfully violate the provisions of 20-30-203 or who shall willfully fail or refuse to deposit with the department the records required by 20-30-105 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $1,000 or by imprisonment in the county jail not to exceed 6 months or by both such fine and imprisonment. Each day's failure to comply with the provisions of said sections shall be a separate violation. Such criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the county attorney.

History: En. 75-9220 by Sec. 20, Ch. 296, L. 1974; R.C.M. 1947, 75-9220.

Cross-References

Penalty for violation of school laws, 20-1-207.

General principles of liability, Title 45, ch. 2.

20-30-404. Jurisdiction of courts — service of process. (1) Any postsecondary educational institution not exempt from the provisions of this chapter, whether or not a resident of or having a place of business in this state, which instructs or educates or offers to instruct or educate, enrolls or offers to enroll, contracts or offers to contract to provide instructional or educational services in this state, whether such instruction or services are provided in person or by correspondence, to a resident of this state or which offers to award or awards any educational credentials to a resident of this state submits such institution and, if a natural person, his personal representative to the jurisdiction of the courts of this state concerning any cause of action arising therefrom and for the purpose of enforcement of this by injunction pursuant to 20-30-405.

(2) Service of process upon any institution subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or outside the state, in the manner prescribed by the rules of civil procedure, with the same force and effect as if the summons had been personally served within Montana. Nothing contained in this section shall limit or affect the right to serve any process as prescribed by the rules of civil procedure.

History: En. 75-9221 by Sec. 21, Ch. 296, L. 1974; R.C.M. 1947, 75-9221.

Cross-References

Rules for determining residence, 1-1-215.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

20-30-405. Enforcement — injunction. (1) The county attorney of any county in which a postsecondary educational institution or an agent thereof is found, at the request of the department or on his own motion, may bring any appropriate action or proceeding (including injunctive proceedings or criminal proceedings pursuant to 20-30-403) in any court of competent jurisdiction for the enforcement of the provisions of this chapter.

(2) Whenever it shall appear to the department that any person, agent, group, or entity is, is about to, or has been violating any of the provisions of this chapter or any of the lawful rules or orders of the department, it may, on its own motion or on the written complaint of any person, file a petition for injunction in any court of competent jurisdiction against such person, group, or entity for the purpose of enjoining such violation or for an order directing compliance with the provisions of this chapter and all rules and orders issued by the department.

History: En. 75-9222 by Sec. 22, Ch. 296, L. 1974; R.C.M. 1947, 75-9222; amd. Sec. 14, Ch. 384, L. 1979.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

CHAPTER 31

FIRE SERVICES TRAINING SCHOOL

Part 1 — General Provisions

20-31-101. Definitions.
20-31-102. Fire services training school — creation — supervision by board of regents.
20-31-103. Purpose of school.
20-31-104. Coordination with other agencies.

Part 2 — Director

20-31-201. Director responsible to board.
20-31-202. Duties of director.

Part 3 — Advisory Council

20-31-301. Organization — procedural rules — compensation of members.
20-31-302. Duties.

Part 4 — Miscellaneous Provisions

20-31-401. Acceptance of gifts and grants — contractual agreements.
20-31-402. Cost recovery fee.

Chapter Cross-References

Firefighters, Title 7, ch. 33, parts 22, 23, and 41.

Fire protection equipment, Title 50, ch. 39.

Fire safety in public buildings, Title 50, ch. 61.

Fire hazards, Title 50, ch. 62.

Investigation of fires, Title 50, ch. 63.

Part 1
General Provisions

20-31-101. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of regents provided for in Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1505.

(2) "Council" means the fire services training advisory council provided for in 2-15-1519.

(3) "Director" means the director of the fire services training school provided for in 2-15-1518.

History: En. by Code Commissioner, 1979; amd. Sec. 3, Ch. 20, L. 1989.

20-31-102. Fire services training school — creation — supervision by board of regents. There is a fire services training school. The fire services training school is allocated to the board of regents for purposes of planning and coordination. The budget request for the fire services training school shall be submitted through the board of regents. The general supervision of the school is vested in the board of regents.

History: En. 75-7716 by Sec. 1, Ch. 104, L. 1977; R.C.M. 1947, 75-7716; amd. Sec. 4, Ch. 20, L. 1989.

20-31-103. Purpose of school. The purpose of the fire services training school is to:

(1) provide fire service personnel with professional training;

(2) identify new methods of fire prevention and suppression and disseminate information about them;

(3) provide a resource center for use by local fire services;

(4) provide testing and certification for personnel and apparatus; and

(5) coordinate fire services training in the state.

History: En. 75-7717 by Sec. 2, Ch. 104, L. 1977; R.C.M. 1947, 75-7717; amd. Sec. 2, Ch. 6, L. 1987.

20-31-104. Coordination with other agencies. The fire services training school shall coordinate its programs and cooperate with state and local fire services to the maximum possible extent in accordance with the policy of the board of regents.

History: En. 75-7725 by Sec. 10, Ch. 104, L. 1977; R.C.M. 1947, 75-7725; amd. Sec. 5, Ch. 20, L. 1989.

Part 2
Director

20-31-201. Director responsible to board. The director is responsible to the board for carrying out the provisions of this chapter.

History: En. 75-7721 by Sec. 6, Ch. 104, L. 1977; R.C.M. 1947, 75-7721(part).

20-31-202. Duties of director. The director shall appoint a staff and execute policies and programs established by the board of regents for the fire services training school. The director is responsible for the direction of staff and operation of the school.

History: En. 75-7722 by Sec. 7, Ch. 104, L. 1977; R.C.M. 1947, 75-7722; amd. Sec. 6, Ch. 20, L. 1989.

Part 3
Advisory Council

20-31-301. Organization — procedural rules — compensation of members. (1) The members of the fire services advisory council shall elect a chairman, a vice-chairman, and such other officers considered advisable by the council. The terms of the officers shall be established by the council.

(2) The council shall adopt rules governing its procedures subject to approval of the board of regents.

(3) Members of the council shall receive compensation under 2-18-501 through 2-18-503.

History: En. 75-7719 by Sec. 4, Ch. 104, L. 1977; R.C.M. 1947, 75-7719; amd. Sec. 7, Ch. 20, L. 1989.

20-31-302. Duties. The fire services training advisory council shall advise the board and director of the fire services training school on planning, coordination, governance, management, and control of the fire services training school to promote the purposes of the school.

History: En. 75-7720 by Sec. 5, Ch. 104, L. 1977; R.C.M. 1947, 75-7720.

Part 4
Miscellaneous Provisions

20-31-401. Acceptance of gifts and grants — contractual agreements. The board of regents may accept gifts, donations, and grants of property and services on behalf of the fire services training school. The board may enter into contractual agreements necessary to facilitate achievement of the purposes of the school.

History: En. 75-7723 by Sec. 8, Ch. 104, L. 1977; R.C.M. 1947, 75-7723; amd. Sec. 8, Ch. 20, L. 1989.

20-31-402. Cost recovery fee. The board of regents may establish a cost recovery fee for training of commercially employed firefighters, and such fees shall be deposited to the general fund.

History: En. 75-7724 by Sec. 9, Ch. 104, L. 1977; R.C.M. 1947, 75-7724; amd. Sec. 9, Ch. 20, L. 1989.

CHAPTER 32

MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK

Part 1 — General

20-32-101. Purpose — definition.
20-32-102. Agency cooperation — responsibilities.
20-32-103. Fee collection and disposition for operational costs.
20-32-104. Apportionment of costs.

Part 1
General

20-32-101. Purpose — definition. (1) The purpose of this part is to establish a Montana educational telecommunications network.

(2) For the purposes of this part, "network" means the Montana educational telecommunications network (METNET).

(3) The aims of the network are to provide:

(a) instructional and educational coursework and materials through telecommunications delivery to students in kindergarten through 12th grade in the Montana public school system;

(b) instructional and educational coursework and materials through telecommunications delivery to students enrolled in units of the Montana university system, the vocational-technical centers, and the community colleges;

(c) instructional and professional development or other appropriate inservice training for teachers in the schools of the state; and

(d) telecommunications capabilities to agencies, subdivisions of state government, and public libraries in order to improve their ability to perform their responsibilities and duties.

History: En. Sec. 1, Ch. 622, L. 1991.

20-32-102. Agency cooperation — responsibilities. (1) To meet the objectives of the network, the following entities shall cooperate with one another:

(a) the department of administration, with its responsibilities for telecommunications for agencies of state government;

(b) the superintendent of public instruction, with a supervisory role over the public system of elementary and high schools; and

(c) the commissioner of higher education, with responsibilities to the Montana university system, the vocational-technical centers, and the community colleges.

(2) The responsibilities of the superintendent of public instruction to the network include but are not limited to:

(a) general supervision of delivery of educational materials through telecommunications to elementary and high school districts in the state;

(b) compilation, maintenance, and dissemination to participating school districts of information that identifies the educational programming available from within and from outside the state;

(c) training of teachers and other school personnel in the use of telecommunications technologies for instructional purposes;

(d) assistance to school districts in identifying and procuring the telecommunications technologies needed to interface with the network;

(e) identification of production capability for telecommunication of educational materials;

(f) assistance to participating school districts with group purchases of instructional and educational materials;

(g) coordination with the commissioner of higher education and the units of the Montana university system to offer advanced placement courses, teacher inservice training, and other instruction through the network;

(h) payment of the superintendent's share of the network costs to the department of administration, as provided in 20-32-104;

(i) coordination with the department of administration to ensure compatibility of network components, to minimize duplication of efforts on behalf of the network, and to maximize use of the network by school districts; and

(j) determination of kinds of equipment, inservice, and district accounting necessary to implement the provisions of this part for school districts.

(3) The responsibilities of the department of administration to the network include but are not limited to:

(a) provision of technical support to the coordinating agencies referred to in subsection (1);

(b) development of standards of compatibility for the network;

(c) procurement and management of network equipment and facilities that have shared use by multiple users or agencies;

(d) assistance with procurement, installation, maintenance, and operation of end-terminal equipment and facilities of the network;

(e) minimizing any duplication of equipment and facilities within the network and in conjunction with the department of administration's other networking capabilities;

(f) coordination of use of the network by state agencies, subdivisions of the state, and public libraries in a manner that does not interfere with the delivery of the primary network function of providing educational services to school districts and state units of higher education;

(g) studying the use of the network by Native American tribal colleges and other nonpublic education institutions in the state, with the long-range goal of coordinating the use of the network with those entities; and

(h) maintenance of cost and usage records and a billing system for user agencies for services rendered that incur marginal costs for the network.

(4) The responsibilities of the commissioner of higher education to the network include but are not limited to:

(a) coordination of the use of the network among the units of higher education and with the superintendent of public instruction and the department of administration;

(b) assistance to the units of the Montana university system to provide college credit courses through the network to students throughout the state;

(c) coordination with the superintendent of public instruction to develop advance placement courses for high school students in Montana, teacher inservice training, and other services and instruction through the network;

(d) assistance to the units of the Montana university system, the vocational-technical centers, and the community colleges in defining their specific needs for interfacing with the network;

(e) assistance to participating units, centers, and colleges with group purchases of instructional and educational materials; and

(f) determination of the kinds of equipment, inservice, and accounting necessary to implement the provisions of this part for the university system, community colleges, and vocational-technical centers.

History: En. Sec. 2, Ch. 622, L. 1991.

20-32-103. Fee collection and disposition for operational costs. As a condition of participation in the network, the Montana university system, vocational-technical centers, and community colleges shall collect from appropriate discretionary funds in a manner approved by the board of regents an amount not to exceed $5 for each full-time equivalent student enrolled in the units, centers, or colleges. The funds collected must be deposited with the commissioner of higher education by July 1 for the purposes of 20-32-102(4). The commissioner of higher education shall pay the department of administration the commissioner's share of the network costs.

History: En. Sec. 3, Ch. 622, L. 1991; amd. Sec. 1, Ch. 547, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 547 in first sentence, after "exceed", substituted "$5" for "$1"; in second sentence, after "July 1", deleted "of the fiscal year, beginning with fiscal year 1992"; and at end of third sentence deleted "as provided in 20-32-104". Amendment effective April 28, 1993.

20-32-104. Apportionment of costs. The superintendent of public instruction and the commissioner of higher education shall share on a prorated basis according to the related student counts any costs incurred by the department of administration for the purposes of 20-32-102(3).

History: En. Sec. 4, Ch. 622, L. 1991.

TITLE 21

RESERVED

TITLE 22

LIBRARIES, ARTS, AND ANTIQUITIES

Ch.
1. Libraries.
2. Arts.
3. Antiquities.

CHAPTER 1

LIBRARIES

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22-1-601. Library compact.
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Chapter Cross-References

Legislative provision for libraries authorized, Art. X, sec. 1, Mont. Const.

School libraries required, 20-7-202.

Part 1

State Library Commission

Part Cross-References

Library Commission allocated to the State Board of Education, 2-15-1511.

22-1-101. State library commission established. (1) There is a state library commission.

(2) This commission is composed of the following members:

(a) the state superintendent of public instruction or his designee;

(b) five persons appointed by the governor, who shall serve staggered terms of 3 years; and

(c) a librarian appointed by the commissioner of higher education from one of the six units of the Montana university system, who shall serve a term of 3 years.

(3) The commission shall annually elect a chairman from its membership.

(4) The members of said commission shall be compensated and receive travel expenses as provided for in 2-15-124.

History: **En. Sec. 1, Ch. 184, L. 1929; re-en. Sec. 1575.1, R.C.M. 1935; amd. Sec. 1, Ch. 91, L. 1945; amd. Sec. 1, Ch. 55, L. 1961; amd. Sec. 1, Ch. 215, L. 1965; amd. Sec. 23, Ch. 439, L. 1975; R.C.M. 1947, 44-127; amd. Sec. 1, Ch. 172, L. 1983; amd. Sec. 7, Ch. 650, L. 1985.**

22-1-102. Librarian and assistants. The commission shall employ as its executive officer a librarian, who is a graduate of an accredited library school and is not a member of the commission, for such compensation as the commission considers adequate. The executive officer shall perform the duties assigned by the commission and serve at the will of the commission. The commission may also employ such other assistants as are required for the performance of the commission's work. In addition to their salaries while on commission business, the librarian and assistants shall be allowed their travel expenses, as provided for in 2-18-501 through 2-18-503, as amended.

History: **En. Sec. 2, Ch. 184, L. 1929; re-en. Sec. 1575.2, R.C.M. 1935; amd. Sec. 2, Ch. 91, L. 1945; amd. Sec. 2, Ch. 55, L. 1961; amd. Sec. 7, Ch. 453, L. 1977; R.C.M. 1947, 44-128.**

22-1-103. State library commission — authority. The state library commission shall have the power to:

(1) give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns, or regions in the state which may propose to establish libraries, as to the best means of establishing and improving such libraries;

(2) maintain and operate the state library and make provision for its housing;

(3) accept and expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes;

(4) make rules and establish standards for the administration of the state library and for the control, distribution, and lending of books and materials;

(5) serve as the agency of the state to accept and administer any state, federal, or private funds or property appropriated for or granted to it for library service or foster libraries in the state and establish regulations under which funds shall be disbursed;

(6) provide library services for the blind and physically handicapped;

(7) furnish, by contract or otherwise, library assistance and information services to state officials, state departments, and residents of those parts of the state inadequately serviced by libraries;

(8) act as a state board of professional standards and library examiners and develop standards for public libraries and adopt rules for the certification of librarians;

(9) designate areas for the establishment of federations of libraries and designate the headquarters library for such federations.

History: **En. Sec. 2, Ch. 215, L. 1965; amd. Sec. 1, Ch. 357, L. 1974; R.C.M. 1947, 44-131(part).**

Cross-References

Library use privileges, 22-1-311.

Part 2
State Library

Part Cross-References

State visual, aural, and other educational media library, 20-7-201.

Natural resource information system and natural heritage program, Title 90, ch. 15.

22-1-201. State library authorized. The state library commission shall maintain and operate a state library to be located in Helena.

History: En. 44-126.1 by Sec. 1, Ch. 3, L. 1977; R.C.M. 1947, 44-126.1.

22-1-202 through 22-1-210 reserved.

22-1-211. Definitions. As used in this part, the following definitions apply:

(1) "Print" includes all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda.

(2) "State agency" includes every state office, officer, department, division, bureau, board, commission, and agency of the state and, where applicable, all subdivisions of each.

(3) "State publication" includes any document, compilation, journal, law, resolution, bluebook, statute, code, register, pamphlet, list, book, proceedings, report, memorandum, hearing, legislative bill, leaflet, order, regulation, directory, periodical, or magazine issued in print or purchased for distribution by the state, the legislature, constitutional officers, any state department, committee, or other state agency supported wholly or in part by state funds.

History: En. Sec. 1, Ch. 261, L. 1967; R.C.M. 1947, 44-132.

22-1-212. Creation of distribution center. There is hereby created, as a division of the state library and under the direction of the state librarian, a state publications library distribution center. The center shall promote the establishment of an orderly depository library system. To this end the state library commission shall make such rules necessary to carry out the provisions of this part.

History: En. Sec. 2, Ch. 261, L. 1967; R.C.M. 1947, 44-133.

22-1-213. State agency publications to be deposited in state library — interlibrary loan — sale publications. Every state agency shall deposit upon release at least four copies of each of its state publications with the state library for record and depository purposes. Additional copies shall also be deposited in quantities certified to the agencies by the state library as required to meet the needs of the depository library system and to provide interlibrary loan service to those libraries without depository status. Additional copies of sale publications required by the state library shall be furnished only upon reimbursement to the state agency of the full cost of such sale publications, and the state library shall also reimburse any state agency for additional publications so required where the quantity desired will necessitate additional printing or other expense to such agency.

History: En. Sec. 3, Ch. 261, L. 1967; R.C.M. 1947, 44-134.

Cross-References

Distribution of Senate and House Journals and Session Laws, 5-11-203.

Printing and publications of state agencies and offices, 18-7-101.

22-1-214. Depository libraries — eligibility. The center shall enter into depository contracts with any municipal or county free library, state college or state university library, the library of congress, the midwest interlibrary center, and other state libraries. The requirements for eligibility to contract as a depository library shall be established by the state library commission upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, ability to preserve such publications and to make them available for public use, and also such geographical locations as will make the publications conveniently accessible to residents in all areas of the state.

History: En. Sec. 4, Ch. 261, L. 1967; R.C.M. 1947, 44-135.

Cross-References

Distribution of Senate and House Journals and Session Laws, 5-11-203.

Library use privileges, 22-1-311.

Participation in a library federation, 22-1-403.

22-1-215. Available publications. The center shall publish and distribute regularly to contracting depository libraries and other libraries upon request a list of available state publications.

History: En. Sec. 5, Ch. 261, L. 1967; R.C.M. 1947, 44-136.

22-1-216. Current publications. Upon request by the center, issuing state agencies shall furnish the center with a complete list of their current state publications and a copy of their mailing and/or exchange lists.

History: En. Sec. 6, Ch. 261, L. 1967; R.C.M. 1947, 44-137.

22-1-217. No general public distribution. The center shall not engage in general public distribution of either state publications or lists of publications.

History: En. Sec. 7, Ch. 261, L. 1967; R.C.M. 1947, 44-138.

22-1-218. Exemptions. This part does not apply to officers of or affect the duties concerning publications distributed by:

(1) the state law library;

(2) the code commissioner in connection with his duties under Title 1, chapter 11, as amended; and

(3) the legislative council in connection with its duties under 5-11-203, as amended.

History: En. Sec. 8, Ch. 261, L. 1967; amd. Sec. 2, Ch. 3, L. 1977; R.C.M. 1947, 44-139; amd. Sec. 11, Ch. 138, L. 1979; amd. Sec. 16, Ch. 79, L. 1983.

Cross-References

Distributions by the Supreme Court, 3-2-604.

Part 3
Free Public Libraries

Part Cross-References

Tax exemption for libraries, 15-6-201.

22-1-301. Definitions. Unless otherwise provided, the following definitions apply in this part:

(1) "City" means city or town.

(2) "Commission" means the state library commission.

(3) "Public library" means a library created under 22-1-303 through 22-1-317 that provides library services to the public by means of central facilities, branch facilities, or bookmobiles.

(4) "State multilibrary card" means a card that is issued to a Montana resident by a public library created under Title 7 or under 22-1-303 and that may be used for library services in every public library in the state.

History: En. Sec. 11, Ch. 260, L. 1967; R.C.M. 1947, 44-227; amd. Sec. 8, Ch. 670, L. 1989; amd. Sec. 1, Ch. 356, L. 1991.

22-1-302. Purpose. It is the purpose of this part to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

History: En. Sec. 1, Ch. 260, L. 1967; R.C.M. 1947, 44-218.

22-1-303. Creation of public library. A public library may be established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) By petition signed by not less than 10% of the resident taxpayers, whose names appear upon the last completed assessment roll of the city or county, being filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which they may by resolution establish a public library. The governing body shall give notice of the contemplated action in a newspaper of general circulation for 2 consecutive weeks giving therein the date and place of the meeting at which the contemplated action is proposed to be taken.

(3) (a) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election, the governing body shall submit to a vote of the qualified electors thereof at the next general election the question of whether a free public library shall be established.

(b) If such a petition is submitted for a city, the petition must be signed by resident taxpayers of said city.

(c) If such a petition is submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city located in said county which may already have established a free public library for such city.

(d) If such petition specifically asks that a special election be called and such petition is signed by 35% of the resident freeholders affected by such petition, then the governing body shall, upon receipt of such petition, immediately set a date for a special election, which date shall be as soon as the procedures for establishing a special election will allow.

(e) If at such election a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain said library or to contract with any city or county for library service to be rendered to the inhabitants of such city or county.

History: En. Sec. 2, Ch. 260, L. 1967; amd. Sec. 1, Ch. 263, L. 1969; R.C.M. 1947, 44-219.

22-1-304. Tax levy — special library fund — bonds. (1) The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service, not to exceed 5 mills on the dollar, upon all property in such county which may be levied by the governing body of such county and not to exceed 7 mills on the dollar upon all property in such city which may be levied by the governing body of such city.

(2) (a) The governing body of any city or county may by resolution submit the question of exceeding the maximum tax levy provided in subsection (1) to a vote of the qualified electors thereof at the next general election. Such resolution must be adopted at least 75 days prior to the general election at which the question will be voted on.

(b) Upon petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of exceeding the maximum mill levy, the governing body shall submit to a vote of the qualified electors thereof at the next general election the question of exceeding the maximum mill levy. Such petition must be delivered to the governing body at least 90 days prior to the general election at which the question will be voted on.

(c) The question shall be submitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ... mill(s) for the library" and "AGAINST exceeding the ... mill maximum library levy" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.

(d) The votes cast for the adoption or rejection of the question must be canvassed, and:

(i) if a majority of the voters voting on the question vote to exceed the maximum mill levy, the governing body shall levy the additional tax for the year in which the vote was taken; or

(ii) if a majority of the voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded.

(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law and is not within the all-purpose mill levy established by 7-6-4451 through 7-6-4453.

(4) The proceeds of such tax shall constitute a separate fund called the public library fund and shall not be used for any purpose except those of the public library.

(5) No money shall be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(6) Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor.

History: En. Sec. 3, Ch. 260, L. 1967; R.C.M. 1947, 44-220; amd. Sec. 1, Ch. 431, L. 1983; amd. Sec. 39, Ch. 250, L. 1985.

Cross-References

Deposit of certain revenues in all-purpose fund, 7-6-4133.

Tax exemption for libraries, 15-6-201.

22-1-305. Library depreciation reserve fund authorized. The governing body of any city or county or a combination of city and county in Montana may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve city, county, or city-county library services.

History: En. 44-229 by Sec. 1, Ch. 78, L. 1975; R.C.M. 1947, 44-229.

22-1-306. Moneys for library depreciation reserve fund. Moneys for the library depreciation reserve fund are those funds which have been allocated to the library in any year but which have not been expended by the end of the year. Such moneys include but are not limited to city or county or city-county appropriations, federal revenue sharing funds, and public and private grants.

History: En. 44-230 by Sec. 2, Ch. 78, L. 1975; R.C.M. 1947, 44-230.

22-1-307. Investment of fund. The moneys held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

History: En. 44-231 by Sec. 3, Ch. 78, L. 1975; R.C.M. 1947, 44-231.

22-1-308. Public library — board of trustees. (1) Upon the establishment of a public library under the provisions of this part, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the chairman of the board of county commissioners, with the advice and consent of said board, shall appoint a board of trustees for the county library.

(2) The library board shall consist of five trustees. Not more than one member of the governing body shall be, at any one time, a member of such board.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall hold their office for 5 years from the date of appointment and until their successors are appointed. Initially, appointments shall be made for 1-, 2-, 3-, 4-, and 5-year terms. Annually thereafter, there shall be appointed before July 1 of each year in the same manner as the original appointments for a 5-year term, a trustee to take the place of the retiring trustee. Trustees shall serve no more than two full terms in succession.

(5) Following such appointments, in July of each year, the trustees shall meet and elect a chairman and such other officers as they deem necessary, for 1-year terms. Vacancies in the board of trustees shall be filled for the unexpired term in the same manner as original appointments.

History: En. Sec. 4, Ch. 260, L. 1967; R.C.M. 1947, 44-221.

22-1-309. Trustees — powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law;

(2) establish and locate a central public library and may establish branches thereof at such places as are deemed necessary;

(3) have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library, and other libraries, to give and receive library service, through the boards of such regions, counties, and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts;

(4) have the power to acquire, by purchase, devise, lease or otherwise, and to own and hold real and personal property in the name of the city or county or both, as the case may be, for the use and purposes of the library and to sell, exchange or otherwise dispose of property real or personal, when no longer required by the library and to insure the real and personal property of the library;

(5) pay necessary expenses of members of the library staff when on business of the library;

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana state library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) have the power to accept gifts, grants, donations, devises, or bequests of property, real or personal, from whatever source and to expend or hold, work, and improve the same for the specific purpose of the gift, grant, donation, devise, or bequest. These gifts, grants, donations, devises, and bequests shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

History: Ap. p. Sec. 5, Ch. 260, L. 1967; Sec. 44-222, R.C.M. 1947; Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; R.C.M. 1947, 11-1006(part), 44-222.

Cross-References

Authorization for governmental and public entities to take property by gift or devise, 7-8-103.

Power to accept gifts, 20-6-601.

Application of other school district provisions, 20-15-403.

22-1-310. Chief librarian — personnel — compensation. The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian, the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation, and prescribe their duties.

History: En. Sec. 6, Ch. 260, L. 1967; R.C.M. 1947, 44-223.

22-1-311. Use of library — privileges. Every library established under the provisions of this part shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

History: En. Sec. 7, Ch. 260, L. 1967; R.C.M. 1947, 44-224.

Cross-References

Authority of State Library Commission, 22-1-103.

Depository libraries, 22-1-214.

Contractual control of library use, 22-1-403.

22-1-312. Cooperation and merger. Library boards of trustees, boards of other educational institutions, library agencies, and local political subdivisions are hereby empowered to cooperate, merge, or combine in providing library service.

History: En. Sec. 8, Ch. 260, L. 1967; R.C.M. 1947, 44-225.

22-1-313. Existing tax-supported libraries — notification — exemption from county taxes. After the establishment of a county free library as provided in this part, the governing body of any city which has an existing tax-supported public library may notify the board of county commissioners that such city does not desire to be a part of the county library system. Such notification shall exempt the property in such city from liability for taxes for county library purposes.

History: En. Sec. 9, Ch. 260, L. 1967; R.C.M. 1947, 44-226.

22-1-314. Continued existence of all public libraries. All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

History: En. Sec. 12, Ch. 260, L. 1967; R.C.M. 1947, 44-228.

22-1-315. City library may assume functions of county library. (1) Instead of establishing a separate county free library, the board of county commissioners may enter into a contract with the board of library trustees or other authority in charge of the free public library of any incorporated city, and the board of library trustees or other authority in charge of such free public library is hereby authorized to make such a contract.

(2) Such contract may provide that the free public library of such incorporated city shall assume the functions of a county free library within the county with which such contract is made, and the board of county commissioners may agree to pay out of the county free library fund into the library fund of such incorporated city such sum as may be agreed upon.

(3) Either party to such contract may terminate the same by giving 6 months' notice of intention to do so.

History: En. Sec. 11, Ch. 45, L. 1915; re-en. Sec. 4573, R.C.M. 1921; re-en. Sec. 4573, R.C.M. 1935; R.C.M. 1947, 44-211.

Cross-References

Erection and maintenance of county buildings, 7-8-2102.

22-1-316. Joint city-county library. (1) A county and any city or cities within the county, by action of their respective governing bodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties.

(2) The expenses of a joint city-county library shall be apportioned between or among the county and cities on such a basis as shall be agreed upon in the contract.

(3) The governing body of any city or county entering into a contract may levy a special tax as provided in 22-1-304 for the establishment and operation of a joint city-county library.

(4) The treasurer of the county or of a participating city within the county, as shall be provided in the contract, shall have custody of the funds of the joint city-county library, and the other treasurers of the county or cities joining in the contract shall transfer quarterly to him all moneys collected for the joint city-county library.

(5) The contract shall provide for the disposition of property upon dissolution of the joint city-county library.

History: En. Sec. 1, Ch. 273, L. 1973; R.C.M. 1947, 44-219.1.

Cross-References

Erection and maintenance of county buildings, 7-8-2102.

22-1-317. City-county library — board of trustees. (1) A joint city-county library shall be governed by a board of trustees composed of five members chosen as specified in the contract, with terms not to exceed 5 years.

(2) Trustees shall serve no more than two full terms in succession.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall meet and elect a chairman and such other officers as they consider necessary for 1-year terms.

(5) The board of trustees shall have the same powers and duties as the board of trustees of a city library or a county library.

History: En. Sec. 2, Ch. 273, L. 1973; amd. Sec. 3, Ch. 3, L. 1977; R.C.M. 1947, 44-219.2.

22-1-318 through 22-1-324 reserved.

22-1-325. Short title. Sections 22-1-325 through 22-1-331 may be cited as the "Information Access Montana Act".

History: En. Sec. 1, Ch. 670, L. 1989.

22-1-326. State aid to public libraries. (1) As used in 22-1-326 through 22-1-331, "public library" means a library created under Title 7 or under 22-1-301 through 22-1-317.

(2) As provided in 22-1-325 through 22-1-329, the commission shall administer state aid to public libraries. The purposes of state aid are to:

(a) broaden access to existing information by strengthening public libraries;

(b) augment and extend services provided by public libraries; and

(c) permit new types of library services based on local need.

(3) Money appropriated for the purposes of this section may not be used to supplant general operating funds of recipient public libraries. The commis-

sion may withhold a distribution to a library that receives less support from a mill levy or local government appropriation than its average for the preceding 3 fiscal years if such a decrease may reasonably be linked to money received or expected to be received under 22-1-325 through 22-1-329.

History: En. Sec. 2, Ch. 670, L. 1989; amd. Sec. 2, Ch. 356, L. 1991.

22-1-327. State aid — per capita — per square mile. The commission shall distribute grants to public libraries on a per capita and per square mile basis.

History: En. Sec. 3, Ch. 670, L. 1989.

22-1-328. State interlibrary loan program — reimbursement — eligibility. (1) Each Montana library eligible for reimbursement under this section for participation in the statewide interlibrary loan program must be reimbursed according to the rules adopted by the commission.

(2) Libraries eligible for interlibrary loan reimbursement under this section include public libraries, libraries operated by public schools or school districts, libraries operated by public colleges or universities, libraries operated by public agencies for institutionalized persons, and libraries operated by nonprofit private educational or research institutions.

History: En. Sec. 4, Ch. 670, L. 1989.

22-1-329. State multilibrary card. The commission shall develop a program to allow Montana libraries to issue to residents a state multilibrary card as defined in 22-1-301.

History: En. Sec. 5, Ch. 670, L. 1989.

22-1-330. Commission rulemaking authority. The commission may adopt rules and procedures for the distribution of state aid to public libraries on a per capita and per square mile basis, for issuance of state multilibrary cards, and for reimbursement for interlibrary loan lending.

History: En. Sec. 6, Ch. 670, L. 1989.

22-1-331. Base grants. The commission shall provide a base grant for each public library to support the cooperative activities and services of the six library federations in the state.

History: En. Sec. 7, Ch. 670, L. 1989.

Part 4

Library Systems

22-1-401. Policy. It is the policy of the legislature to encourage the most efficient delivery of library services to the people of Montana. To that end the state should be divided into regions within which libraries desiring to participate in the distribution of such state funding to libraries as may be available from time to time shall organize into library federations to pool resources and information and avoid duplication of effort.

History: En. Sec. 2, Ch. 215, L. 1965; amd. Sec. 1, Ch. 357, L. 1974; R.C.M. 1947, 44-131(part).

22-1-402. Library systems — definition. Library systems shall include library federations or library networks, as defined hereafter:

(1) (a) A library federation is a combination of libraries serving a multicounty, multicity, or city-county area within a federation area designated by

the state library commission. Any other public library or town, city, or county within the federation area may participate in such a federation.

(b) Two or more cities, towns, counties, or a city and one or more counties may agree by contract to form such a federation by action of their respective governing bodies or duly created boards of library trustees, provided that one of the parties is or maintains a library which has been designated by the state library commission as a headquarters library for that federation area. The participating entities may retain such autonomy over their respective libraries as may be specified in the contract.

(c) The expense of providing library services for the library federation shall be based on funds received from the state or participating libraries as shall be agreed upon in the contract. The funds of the federation shall be maintained as a separate account as shall be provided in the contract. Participating libraries shall transfer semiannually to the account all money collected for the federation in their respective jurisdiction.

(d) A participating entity may withdraw from a federation according to the terms for withdrawal provided in the contract by the action of its governing body or by a majority of its qualified voters voting at a general or special election.

(2) A library network is an agreement between individual libraries or library systems, which may be intercity, intrastate, or interstate, for the exchange of information or to provide specific library services not provided in existing library federations.

History: En. Sec. 1, Ch. 132, L. 1939; amd. Sec. 2, Ch. 357, L. 1974; R.C.M. 1947, 44-212; amd. Sec. 1, Ch. 374, L. 1981.

22-1-403. Participation in the federation. (1) When a library federation shall have been established, the legislative body of any government unit in the designated library federation area may decide, with the concurrence of the board of trustees of its library if it is maintaining a library, to participate in the library federation. Each local entity may determine the amount of services it wishes to supply to fulfill the needs of its unit. After the necessary contract has been executed and beginning with the next fiscal year, the governmental unit shall participate in the library federation and its residents shall be entitled to the benefits of the library federation and property within its boundaries shall be subject to taxation for library federation purposes.

(2) The board of regents of higher education may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the Montana university system is located for the establishment and operation of joint library services. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library services established pursuant to this section shall be operated and supported as provided in such contract and under this part.

History: En. Sec. 2, Ch. 132, L. 1939; amd. Sec. 1, Ch. 249, L. 1963; amd. Sec. 3, Ch. 357, L. 1974; R.C.M. 1947, 44-213.

22-1-404. Board of trustees — coordinator. (1) In a library federation there shall be a board of trustees with advisory powers only, the operation of the library federation having been specified by contract. The board of trustees of each participating library shall name one of their members to the federation advisory board of trustees, and each participating entity without a duly appointed library board shall name a layman to represent that entity on the library federation board of trustees.

(2) The librarian of the headquarters library shall serve as the coordinator of the federation and as a nonvoting member of the federation advisory board of trustees.

History: (1)En. Sec. 3, Ch. 132, L. 1939; amd. Sec. 10, Ch. 260, L. 1967; amd. Sec. 4, Ch. 357, L. 1974; Sec. 44-214, R.C.M. 1947; (2)En. Sec. 2, Ch. 215, L. 1965; amd. Sec. 1, Ch. 357, L. 1974; Sec. 44-131, R.C.M. 1947; R.C.M. 1947, 44-131(part), 44-214.

22-1-405. Boards of trustees — authority — resolution of disagreements. (1) The board of trustees of a library federation shall act as an advisor to the participating libraries and their boards of trustees.

(2) Control over the budgets and administrative policies of participating libraries shall remain in their boards of trustees as provided in 22-1-309.

(3) Any disagreement among participants in a library federation regarding the apportionment of funds or grants received from the state library commission shall be resolved by the state library commission.

History: En. 44-214.1 by Sec. 5, Ch. 357, L. 1974; R.C.M. 1947, 44-214.1.

22-1-406 through 22-1-410 reserved.

22-1-411. Repealed. Sec. 1, Ch. 355, L. 1981.

History: En. Sec. 4, Ch. 132, L. 1939; amd. Sec. 6, Ch. 357, L. 1974; R.C.M. 1947, 44-215.

22-1-412. Purpose. It is the purpose of 22-1-412 and 22-1-413 to establish a program whereby state funds may be appropriated to the Montana state library commission to provide the benefits of quality public library service to all residents of Montana by developing and strengthening local public libraries through library federations as defined in 22-1-402.

History: En. 44-304 by Sec. 1, Ch. 416, L. 1975; R.C.M. 1947, 44-304; amd. Sec. 1, Ch. 373, L. 1981.

22-1-413. Administration by Montana state library commission. The Montana state library commission shall receive and administer the appropriation for state funding to public library federations. The commission shall allocate such appropriation among such types of grant programs and shall allocate funds among federations according to such formulas for distribution as it shall establish from time to time by rules adopted pursuant to 22-1-103. Federations receiving state funds from the commission shall report semiannually to the commission concerning the progress of the various projects for which state funding was received, which reports shall contain an accounting for all state funds received.

History: En. 44-305 by Sec. 2, Ch. 416, L. 1975; R.C.M. 1947, 44-305; amd. Sec. 2, Ch. 373, L. 1981.

22-1-414 through 22-1-416. Repealed. Sec. 3, Ch. 373, L. 1981.

Compiler's Comments

Histories of Repealed Sections: **22-1-414 through 22-1-416.** En. Secs. 3, 4, 5, Ch. 416, L. 1975; R.C.M. 1947, 44-306, 44-307, 44-308.

Part 5
Law Library

Part Cross-References

Distribution of Administrative Rules of Montana to law library, 2-4-313.

Distribution of reports of Supreme Court decisions, 3-2-604.

22-1-501. State law library created. The library formerly known as a department of the state library of Montana and called "the law library" is a separate and distinct library designated the "state law library of the state of Montana". The collections of laws, decisions of courts, law reports, textbooks, legal periodicals, and miscellaneous books and journals together with pamphlets, papers, maps, charts, and manuscripts in the law library or belonging to the law library or acquired by or donated to the law library constitute the law library, and the title to all of the property constituting the law library must be in the state of Montana, subject to the custody and control of the library board established in 22-1-502.

History: En. Sec. 1, Ch. 153, L. 1949; R.C.M. 1947, 44-401; amd. Sec. 20, Ch. 16, L. 1991.

22-1-502. Location — control by board of trustees. The state law library of the state of Montana shall be located in Helena, Montana, and shall be in the immediate custody and subject to the control of a board of trustees consisting of the chief justice and the justices of the supreme court of the state of Montana.

History: En. Sec. 2, Ch. 153, L. 1949; amd. Sec. 1, Ch. 142, L. 1977; R.C.M. 1947, 44-402; amd. Sec. 1, Ch. 252, L. 1981.

Cross-References

Supreme Court created, Art. VII, sec. 1 through 3, Mont. Const.

22-1-503. Authority of board. The powers and duties of said board are as follows:

(1) to make rules, not inconsistent with law, for the government of the board and for the government and administration of the state law library, including rules designating when and for what periods of time the library shall be open to the public and the office hours of the library;

(2) to appoint a librarian and prescribe the duties of such librarian when not otherwise provided for by law;

(3) to sell or exchange duplicate copies of books and pay the moneys arising therefrom into the state law library fund;

(4) to see that the books and other properties of the library are maintained in good order and repair and are protected from theft or injury;

(5) to draw from the state treasury, at any time when needed for the legitimate expenses in maintaining and operating the library and acquiring books, reports, journals, and other works and properties therefor, including complete sets of statutory laws and codified laws of the United States of America, of the several states of the union, and of other jurisdictions, any moneys in the fund and available for such purposes;

(6) to establish such lawful relations and working arrangements with the library of congress of the United States, with the copyright office therein, and with the superintendent of documents of the United States as may be for the benefit and advantage of the state law library and promote the acquisition of

books and other works from such sources as may be useful to those resorting to the facilities of the state law library.

History: En. Sec. 3, Ch. 153, L. 1949; amd. Sec. 14, Ch. 93, L. 1969; R.C.M. 1947, 44-403; amd. Sec. 8, Ch. 125, L. 1983.

22-1-504. Duties of librarian. The librarian shall develop and maintain an adequate collection and services to fulfill the needs of library users and shall establish procedures for the maintenance and control of the collection.

History: En. Sec. 5, Ch. 153, L. 1949; amd. Sec. 2, Ch. 142, L. 1977; R.C.M. 1947, 44-405(2).

22-1-505. Use of library. The state law library shall be maintained and operated for the use of the members of the supreme court, the members of the legislature, the several officers of the senate and of the house of representatives, for state officers and employees, for members of the bar of the supreme court of Montana, for members of the bar of supreme courts of other states while in attendance before the supreme court of Montana, and members of the general public agreeing to the rules established by the librarian.

History: En. Sec. 5, Ch. 153, L. 1949; amd. Sec. 2, Ch. 142, L. 1977; R.C.M. 1947, 44-405(1).

22-1-506. Liability for injury to books or failure to return. Every person who defaces, tears, or otherwise injures any book or other work or who fails to return any book taken by him is liable to the state in three times the value thereof if such book is not replaced by a new one or another book of identical title, in good order and condition; and no statute of limitations shall ever be effective against the claim of the state under this section.

History: En. Sec. 6, Ch. 153, L. 1949; R.C.M. 1947, 44-406.

Part 6

Interstate Library Compact

22-1-601. Library compact. The Interstate Library Compact is hereby approved, enacted into law, and entered into by the state of Montana, which compact is in full as follows:

INTERSTATE LIBRARY COMPACT

Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states, and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this compact:

(1) "public library agency" means any unit or agency of local or state government operating or having power to operate a library;

(2) "private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library;

(3) "library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

Article III. Interstate Library Districts

(1) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain, and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities, and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(2) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(3) If a library agreement provides for joint establishment, maintenance, or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

(a) undertake, administer, and participate in programs or arrangements for:

(i) securing, lending, or servicing books and other publications, any other materials suitable to be kept or made available by libraries, or library equipment; or

(ii) for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof;

(b) accept for any of its purposes under this compact any and all donations and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof or interstate agency or from any institution, person, firm, or corporation and receive, utilize, and dispose of the same;

(c) operate mobile library units or equipment for the purpose of rendering bookmobile service within the district;

(d) employ professional, technical, clerical, and other personnel and fix terms of employment, compensation, and other appropriate benefits; and where desirable, provide for the in-service training of such personnel;

(e) sue and be sued in any court of competent jurisdiction;

(f) acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service;

(g) construct, maintain, and operate a library, including any appropriate branches thereof;

(h) do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV. Interstate Library Districts, Governing Board

(1) An interstate library district which establishes, maintains, or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(2) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Cooperation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing, and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services, or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district, and an agreement embodying any such program, service, or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI. Library Agreements

(1) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

(a) detail the specific nature of the services, programs, facilities, arrangements, or properties to which it is applicable;

(b) provide for the allocation of costs and other financial responsibilities;

(c) specify the respective rights, duties, obligations, and liabilities of the parties;

(d) set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(2) No public or private library agency shall undertake to exercise, itself or jointly with any other library agency, by means of a library agreement, any power prohibited to such agency by the constitution or statutes of its state.

(3) No library agreement shall become effective until filed with the compact administrator of each state involved and approved in accordance with Article VII of this compact.

Article VII. Approval of Library Agreements

(1) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 90 days of its submission shall constitute approval thereof.

(2) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (1) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter, or otherwise impair any obligation imposed on any library by otherwise applicable law nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(1) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is

situated, may pledge its credit in support of an interstate library district established by the agreement.

(2) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry into Force and Withdrawal

(1) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(2) This compact shall continue in force with respect to a party state and remain binding upon such state until 6 months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 119, L. 1967; R.C.M. 1947, 44-601.

22-1-602. Executive officer of state library commission as administrator. The executive officer of the state library commission shall be the compact administrator of the Interstate Library Compact.

History: En. Sec. 2, Ch. 119, L. 1967; R.C.M. 1947, 44-602.

Cross-References

State librarian as executive officer, 22-1-102.

Parts 7 through 10 reserved

Part 11
Library Records Confidentiality Act

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

22-1-1101. Short title. This part may be cited as the "Montana Library Records Confidentiality Act".

History: En. Sec. 1, Ch. 476, L. 1985.

22-1-1102. Definitions. As used in 22-1-1103, the following definitions apply:

(1) "Library" means a library that is established by the state, a county, city, town, school district, or a combination of those units of government, a college or university, or any private library open to the public.

(2) "Library records" means any document, record, or any other method of storing information retained, received, or generated by a library that identifies a person as having requested, used, or borrowed library material or other records identifying the names or other personal identifiers of library users. Library records does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general or records that are not retained or retrieved by personal identifier.

History: En. Sec. 2, Ch. 476, L. 1985.

22-1-1103. Nondisclosure of library records. (1) No person may release or disclose a library record or portion of a library record to any person except in response to:

(a) a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or

(b) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy.

(2) A library is not prevented from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation if those reports are presented so that no individual is identified therein.

(3) Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines.

History: En. Sec. 3, Ch. 476, L. 1985.

Cross-References

Citizens entitled to inspect and copy public writings, 2-6-102.

Public records management, Title 2, ch. 6, part 2.

22-1-1104 through 22-1-1110 reserved.

22-1-1111. Penalty. Any person who violates 22-1-1103 is guilty of a misdemeanor and is liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or $100, whichever is greater. Reasonable attorney fees and the costs of bringing the action may be awarded to the prevailing party.

History: En. Sec. 6, Ch. 476, L. 1985.

Cross-References

Costs of actions, Title 25, ch. 10.

CHAPTER 2

ARTS

Part 1 — Montana Arts Council

22-2-101. Montana arts council established.
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22-2-602. Advisory committee — composition — duties.

Chapter Cross-References

County museums and facilities for the arts, Title 7, ch. 16, part 22.

Art galleries' tax exemption, 15-6-201.

State art galleries to be operated by the State Historical Society, 22-3-101.

Part 1
Montana Arts Council

Part Cross-References

Agencies allocated to the State Board of Education, 2-15-1511.

Artwork for waterfowl stamps, 87-2-412.

22-2-101. Montana arts council established. In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element which makes living and vacationing in Montana desirable to the people of other states, the Montana arts council is hereby created as an agency of state government.

History: En. Sec. 1, Ch. 2, L. 1967; R.C.M. 1947, 82-3601.

22-2-102. Membership of council — appointment. The Montana arts council consists of 15 members appointed by the governor, by and with the consent of the senate. Insofar as possible, the governor shall appoint members from the various geographical areas of the state who have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest.

History: En. Sec. 2, Ch. 2, L. 1967; R.C.M. 1947, 82-3602; amd. Sec. 1, Ch. 385, L. 1989.

22-2-103. Council membership — tenure — compensation. The term of office of each member is 5 years. The governor shall designate a chairman and a vice-chairman from the members of the council to serve in those capacities at the pleasure of the governor. The chairman is the chief executive officer of the council. Each vacancy must be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council must be compensated and receive travel expenses as provided for in 2-15-124.

History: En. Sec. 3, Ch. 2, L. 1967; amd. Sec. 10, Ch. 51, L. 1974; amd. Sec. 55, Ch. 439, L. 1975; R.C.M. 1947, 82-3603; amd. Sec. 2, Ch. 385, L. 1989.

22-2-104. Executive committee. The council may select an executive committee of five members and delegate to the committee such functions in aid of the efficient administration of the affairs of the council as the council deems advisable.

History: En. Sec. 4, Ch. 2, L. 1967; R.C.M. 1947, 82-3604.

22-2-105. Administrative officers and employees — compensation. The council may employ, and at pleasure remove, administrative officers and other employees as may be needed and fix their compensation within the amounts made available for such purposes.

History: **En. Sec. 5, Ch. 2, L. 1967; amd. Sec. 11, Ch. 51, L. 1974; R.C.M. 1947, 82-3605.**

22-2-106. Council duties. The duties of the council shall be to:

(1) encourage throughout the state the study and presentation of the arts and stimulate public interest and participation therein;

(2) cooperate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to music, theater, dance, painting, sculpture, architecture, and allied arts and crafts, and make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) foster public interest in the cultural heritage of our state and expand the state's cultural resources;

(4) encourage and assist freedom of artistic expression essential for the well-being of the arts.

History: **En. Sec. 6, Ch. 2, L. 1967; amd. Sec. 39, Ch. 93, L. 1969; R.C.M. 1947, 82-3606; amd. Sec. 9, Ch. 125, L. 1983.**

22-2-107. Gifts and donations. The council may acquire, accept, receive, dispose of, and administer in the name of the council any gifts, donations, properties, securities, bequests, and legacies that may be made to it. Moneys received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, shall be deposited in the state special revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the national foundation on the arts.

History: **En. Sec. 7, Ch. 2, L. 1967; amd. Sec. 11, Ch. 3, L. 1977; R.C.M. 1947, 82-3607; amd. Sec. 1, Ch. 277, L. 1983.**

22-2-108. Authorization for council to enter certain contracts. The council may contract with individuals, organizations, and institutions for services or cooperative endeavors furthering the objectives of the council's programs.

History: **En. Sec. 8, Ch. 2, L. 1967; R.C.M. 1947, 82-3608.**

22-2-109. Financing of council. The council may engage in such fundraising drives and public contribution campaigns as will contribute to its continued development and support. All revenues received in such manner shall be deposited in the state special revenue fund of the state treasury and may not be used for any purposes other than the improvement, development, and operation and programs of the council.

History: **En. Sec. 9, Ch. 2, L. 1967; R.C.M. 1947, 82-3609; amd. Sec. 1, Ch. 277, L. 1983.**

Part 2

Montana Folklife Project
(Expired July 1, 1983. Sec. 1, Ch. 473, L. 1981)

Part Compiler's Comments

Histories of Expired Sections: **22-2-201 through 22-2-205.** En. Secs. 1 through 5, Ch. 531, L. 1979.

Part 3
Cultural and Aesthetic Projects

22-2-301. Cultural and aesthetic projects grants. (1) Any person, association, or representative of a governing unit seeking a grant for a cultural or aesthetic project from the income of the trust fund created in 15-35-108 must submit a grant proposal to the cultural and aesthetic projects advisory committee, in care of the Montana arts council, by August 1 of the year preceding the convening of a regular legislative session.

(2) Grant proposals must be for the purpose of protecting works of art in the state capitol or other cultural and aesthetic projects.

History: En. Sec. 2, Ch. 653, L. 1979; amd. Sec. 1, Ch. 99, L. 1983; Sec. 22-3-112, MCA 1981; redes. 22-2-301 by Code Commissioner, 1983; amd. Sec. 1, Ch. 587, L. 1991.

22-2-302. Advisory committee — powers and duties. (1) The cultural and aesthetic projects advisory committee provided for in 2-15-1521 shall review all proposals for cultural and aesthetic project grants before they are submitted to the legislature.

(2) Consistent with the rules adopted in accordance with 22-2-303, the committee shall make recommendations to the legislature on each proposal submitted to the committee.

(3) The committee's recommendations to the legislature are advisory only.

(4) The committee shall present its recommendations to the appropriations committee of the legislature by the 15th day of any regular legislative session.

History: En. Sec. 3, Ch. 99, L. 1983.

22-2-303. Rulemaking authority. (1) The Montana historical society and the Montana arts council shall adopt rules that specify the criteria the advisory committee shall use when evaluating and making recommendations on cultural and aesthetic grant proposals submitted to the legislature.

(2) The Montana arts council shall adopt rules that implement the provisions of 22-2-306, 22-2-308, and 22-2-309, relating to local support, matching requirements, application procedures, and disbursements of grants.

History: En. Sec. 5, Ch. 99, L. 1983; amd. Sec. 4, Ch. 732, L. 1985.

Cross-References

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

22-2-304. Cultural and aesthetic project appropriations — administration. (1) The legislature must appropriate funds from the income of the trust fund created in 15-35-108 for cultural and aesthetic projects before any grant for a cultural or aesthetic project is awarded.

(2) Costs incurred by the Montana arts council for accounting, correspondence, project visits, and solicitation of proposals related to cultural and aesthetic project grants and the costs of the advisory committee established in 2-15-1521 shall be paid from appropriations from the income of the trust fund.

(3) Grant proposals are heard by a legislative appropriations subcommittee.

(4) Grant proposals approved by the legislature are administered by the Montana arts council.

History: En. Sec. 4, Ch. 99, L. 1983; amd. Sec. 1, Ch. 13, L. 1985; amd. Sec. 5, Ch. 626, L. 1989; amd. Sec. 2, Ch. 8, Sp. L. January 1992.

22-2-305. Allocation and disbursement of funds. (1) The Montana arts council shall allocate and disburse cultural and aesthetic project account funds as appropriated by the legislature.

(2) If the funds in the cultural and aesthetic projects account are insufficient to fund projects in the amount of the legislative appropriation for the projects, the council shall allocate and disburse the account's funds in accordance with the provisions of the appropriation act.

History: En. Sec. 2, Ch. 688, L. 1983; amd. Sec. 1, Ch. 315, L. 1987.

22-2-306. Grant conditions — additional funds — accounts and reports. (1) A grant may not be awarded unless the grantee accepts the Montana arts council's conditions of the grant and signs a contract stipulating those conditions.

(2) A grantee must agree in writing that:

(a) the grantee is the official and sole agency for the administration of the project described in the grant agreement; and

(b) no person will, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that results from the expenditure of grant funds.

(3) The grantee must agree that the funds granted will be expended solely for the purpose and activities described in the approved proposal. All funds granted to the grantee must be spent or encumbered during the grant period.

(4) Disbursements to grantees must be as follows, based upon the cash flow needs of the projects and the revenues available:

(a) Projects that are to receive more than $10,000 may receive an amount not exceeding 25% of the grant award in the first 6 months of the biennium, 50% in the first year of the biennium, 75% in the first 18 months of the biennium, and the balance in the remainder of the biennium. Within the limitations contained in this subsection, the amount of each payment must be determined by the Montana arts council in its discretion. Each payment may be made only after an examination of the costs incurred in the project and the amount, if any, of the unencumbered or unexpended balance of prior grant payments for the project.

(b) Projects that are to receive $10,000 or less may receive the total grant in any fiscal quarter if the Montana arts council determines that the cultural and aesthetic project account has funds available and that, after an examination of the costs incurred by the project, total payment is appropriate.

(c) A grant award budget may be modified in accordance with this subsection. A grantee may modify line items in an approved budget in an amount not to exceed 10% of the total grant award. A grantee may, with permission of the Montana arts council, modify line items in an approved budget in an amount not to exceed 20% of the total grant award. A modification may not increase the grant award or change the scope or purpose of the award.

(5) The grantee must maintain accounts, records, and other pertinent material pertaining to the costs incurred and expenditures made under the grant. The system of accounting employed by the grantee must be in accordance with generally accepted accounting principles and be applied in a consistent manner so that project costs and expenditures can be clearly identified. Accounts, records, and other pertinent material must be maintained for 3 years from the official termination date of the grant period or until an audit, approved by the council, has been completed and any questions arising from the audit have been resolved to the satisfaction of the council.

(6) Grantees must submit to the council semiannual reports of expenditures during the course of the project and other financial and descriptive reports that the council may require. The grantee must submit, within 30 days after completion of the project, a final financial report and a narrative report stating what was accomplished with the grant. Five percent of the total grant award must be held pending receipt of final reports by the council. With regard to grantees who in the past have submitted late reports, 30% of the grant award may be held pending receipt of final reports by the council.

(7) The council may, at the principal place of business of the grantee and during regular business hours, examine any directly pertinent records, accounts, and documents of the grantee involving transactions related to the grant.

History: En. Sec. 1, Ch. 688, L. 1983; amd. Sec. 3, Ch. 732, L. 1985; amd. Sec. 2, Ch. 315, L. 1987; amd. Sec. 1, Ch. 656, L. 1989.

Cross-References

Nondiscrimination by state, 49-2-308.

22-2-307. Renumbered 22-2-321 by Code Commissioner, 1985.

22-2-308. Application procedure — grant criteria. (1) A grant for a facility owned and operated by a county or municipality must require financial support for the facility from the county or municipality. A grant for a facility owned by a county or municipality but operated by a nonprofit organization is expected to have financial support from the county or municipality, but must have, at a minimum, in-kind support for the facility from the county or municipality. The grant application form, which must be prescribed by the Montana arts council, must request specific information about the level of local support for the project and the facility.

(2) An applicant for a historic preservation project shall cooperate with the state historic preservation office. A letter from the state historic preservation office, stating any agreements reached with the applicant, must be received by the Montana arts council before the grant funds may be released.

History: En. Sec. 1, Ch. 732, L. 1985; amd. Sec. 2, Ch. 587, L. 1991; amd. Sec. 1, Ch. 479, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 479 near beginning of first sentence of (1), after "owned", inserted "and operated" and before "support" deleted "and in-kind", inserted second sentence providing that a grant for a facility owned by a county or municipality but operated by a nonprofit organization have at a minimum in-kind support from the county or municipality, and at end of third sentence, after "project", inserted "and the facility"; and made minor changes in style.

22-2-309. Grant categories. (1) The following categories are established for grant funds:

(a) special projects which are specific cultural and aesthetic activities, services, or events of limited duration;

(b) operational support for cultural institutions that have been in existence for at least 2 years and whose budgets reflect only the cost of continuing their current program;

(c) capital expenditures for acquisition, construction, or renovation of facilities; and

(d) challenge grants for permanent endowments to benefit cultural nonprofit grant recipients.

(2) The Montana arts council may require a match in cash or donated services for special project and operational support grants. There is a presumption that the match must represent $1 in value for each dollar of the grant. The Montana arts council may accept matches in excess of the presumed value or may in its discretion require a lesser amount.

(3) Capital expenditures may not exceed 25% of the total grant funds appropriated. Capital expenditure grants require a match of at least $3 in cash or donated goods and services, which goods and services must be donated specifically for the capital expenditure project, to receive each dollar of grant funds.

(4) Challenge grants require a match of at least $3 in cash or irrevocable planned or deferred gifts to receive each dollar of grant funds. Challenge grants are available upon meeting the specified match. Not less than one-third of the specified match must be in cash. Not more than one-third of the match may be in wills, devises, bequests, and paid-up life insurance policies. A devise may include retention of an irrevocable life estate by the donor.

History: **En. Sec. 2, Ch. 732, L. 1985; amd. Sec. 3, Ch. 315, L. 1987; amd. Sec. 2, Ch. 656, L. 1989.**

22-2-310 through 22-2-320 reserved.

22-2-321. Reversion of granted funds. At the end of a grant period, any unexpended balance of the grant shall revert to the cultural and aesthetic projects account provided for in 15-35-108.

History: **En. Sec. 3, Ch. 688, L. 1983; Sec. 22-2-307, MCA 1983; redes. 22-2-321 by Code Commissioner, 1985.**

Part 4

Art for State Buildings

22-2-401. Short title. This part may be cited as the "Percent-for-Art Act".

History: **En. Sec. 1, Ch. 552, L. 1983.**

22-2-402. Purpose. The state of Montana, in recognition of its responsibility to create a more humane environment of distinction, enjoyment, and pride for all its citizens and in recognition that public art is a resource that stimulates the vitality and economy of the state's communities and provides opportunity for artists and other skilled workers to practice their crafts, declares that a portion of the funds for the construction or renovation of appropriate state buildings be allocated for the acquisition of works of art for such buildings.

History: En. Sec. 2, Ch. 552, L. 1983.

22-2-403. Definitions. As used in this part, the following definitions apply:

(1) "Artist" means a practitioner in the visual arts generally recognized by his peers or critics as a professional who produces works of art. The term does not include the project architect, or any member of his firm, of a new state building that is to have works of art under the provisions of this part.

(2) "New state building" means any structure to be built, remodeled, or renovated with money appropriated by the legislature that is, in the opinion of the architecture and engineering division of the department of administration, appropriate for the inclusion of works of art.

(3) "Work of art" means any work of visual art, including but not limited to a drawing, painting, mural, fresco, sculpture, mosaic, photograph, work of calligraphy, work of graphic art (including an etching, lithograph, offset print, or silk screen), craft (including crafts in clay, textile, fiber, wood, metal, plastic, or glass), or mixed media (including a collage, assemblage, or any combination of art media). The term does not include environmental landscaping.

History: En. Sec. 3, Ch. 552, L. 1983.

22-2-404. Art for new state buildings — finance. (1) Subject to legislative allocations as provided in subsection (2), all capital project appropriations by the legislature shall include, as a part of the appropriation, an amount not to exceed 1% of the amount appropriated for the use of the Montana arts council for the acquisition of works of art for new state buildings, maintenance of works of art, and administration of this part as provided in subsection (3).

(2) (a) If a state building recommended for construction in the report required by Title 17, chapter 7, part 2, is also recommended as appropriate for the inclusion of works of art as provided in 22-2-403(2), the report shall so state, and in addition the report shall include any recommendation made by the Montana arts council concerning the appropriateness of the building for the inclusion of works of art, the types of works of art suggested for inclusion in such building, and the anticipated cost of such suggested works of art, including costs of acquisition, maintenance, and administrative expenses associated with the suggested works of art. The Montana arts council may submit a recommendation even if the architecture and engineering division of the department of administration has determined that a structure is not appropriate for inclusion of works of art.

(b) The legislature may, for those buildings recommended as appropriate for the inclusion of works of art, allocate an amount not to exceed 1% of the appropriated cost for use as specified in subsection (1).

(c) Additional funds, including separate appropriations, donations, grants, and other available governmental funds, may be used for the acquisition of works of art for new state buildings.

(3) (a) One percent of the funds received from the maximum appropriation setoff allocated by the legislature must be granted to the Montana arts council for the maintenance of art in state buildings.

(b) The administration of this part may be funded out of the appropriation setoff allocated by the legislature.

History: **En. Sec. 4, Ch. 552, L. 1983.**

22-2-405. Display of works of art. The works of art acquired under the provisions of this part may be an integral part of or attached to the new state building or may be displayed on the parcel of land on which the new state building is located. The works of art must be so located that they are in public view.

History: **En. Sec. 5, Ch. 552, L. 1983.**

22-2-406. Administration — selection of works of art. (1) The Montana arts council is primarily responsible for the administration of this part. The council must:

(a) submit its recommendations to the architecture and engineering division of the department of administration for inclusion in the report required by Title 17, chapter 7, part 2, concerning the appropriateness of any such building for the inclusion of works of art, a description of the types of works of art suggested for inclusion in the building, and the anticipated costs of acquisition, maintenance, and administrative expenses associated with the suggested works of art.

(b) appoint a three-member screening committee for each new state building to recommend artists to be commissioned or completed works of art to be purchased. The committee must consist of the project architect or his designee, a professional artist, and a representative from the user agency who is a resident of the community in which the new state building is to be constructed.

(c) select; commission the artist for; review the design, execution, and placement of; and finally accept all works of art. The Montana arts council must consult with the screening committee in fulfilling the requirements of this subsection (1)(c).

(d) assist in contract negotiations with artists who are selected;

(e) ensure that works of art acquired for display under the provisions of this part are displayed in such a manner that they are in public view;

(f) ensure that each work of art is properly maintained and may use the funds provided for in 22-2-404 or any other funds available for such maintenance; and

(g) maintain a close working relationship with the artist throughout each project.

(2) No payment may be made to any artist for works of art under this part without prior authorization of the Montana arts council.

History: **En. Sec. 6, Ch. 552, L. 1983.**

22-2-407. State ownership of work of art. The state must obtain sole ownership of each work of art acquired for display under this part, including all tangible rights and privileges, subject to the artist's right to claim authorship of the work of art.

History: **En. Sec. 7, Ch. 552, L. 1983.**

22-2-408. Part not exclusive. The provisions of this part are not the exclusive manner of acquiring and displaying works of art in public buildings.

History: **En. Sec. 8, Ch. 552, L. 1983.**

Part 5
Sale of Fine Art by Art Dealer

Part Cross-References

Consignment sales by commission merchants, Title 30, ch. 11, part 4.

Rights of artists in products of the mind, 30-13-131, 30-13-133 through 30-13-135.

Trustees, Title 72, ch. 33, part 6.

Beneficiaries, Title 72, ch. 33, part 7.

22-2-501. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Art dealer" means a person engaged in the business of selling works of fine art, other than a person exclusively engaged in the business of selling goods at public auction.

(2) "Artist" means a person who creates a work of fine art or, if the person is deceased, the person's heir, devisee, or personal representative.

(3) "Consignment" means that no title to, estate in, or right to possession of fine art superior to that of the consignor vests in the consignee, notwithstanding the consignee's power or authority to transfer and convey to a third person all of the right, title, and interest of the consignor in and to such fine art.

(4) "Fine art" means a painting, sculpture, drawing, work of graphic art (including an etching, lithograph, signed limited edition offset print, silk screen, or a work of graphic art of like nature), a work of calligraphy, photographs, original works in ceramics, wood, metals, glass, plastic, wax, stone, or leather, or a work in mixed media (including a collage, assemblage, or any combination of the art media mentioned in this subsection).

(5) "Person" means an individual, partnership, corporation, association, or other group, however organized.

History: En. Sec. 1, Ch. 534, L. 1985.

22-2-502. Artist-art dealer relationship. Notwithstanding any custom, practice, or usage of the trade to the contrary, whenever an artist delivers or causes to be delivered a work of fine art of the artist's own creation to an art dealer in this state for the purpose of exhibition and sale on a commission, fee, or other basis of compensation, the delivery to and acceptance of such work of fine art by the dealer constitutes a consignment, unless the delivery to the art dealer is pursuant to an outright sale for which the artist receives upon delivery or has received prior to delivery full compensation for the work of fine art.

History: En. Sec. 2, Ch. 534, L. 1985.

22-2-503. Agency relationship — trust property. A consignment of a work of fine art results in the following:

(1) The art dealer, after delivery of the work of fine art, is an agent of the artist for the purpose of sale or exhibition of the consigned work of fine art within the state of Montana. This relationship must be defined in writing and renewed at least every 3 years by the art dealer and the artist. It is the responsibility of the artist to identify clearly the work of art by securely attaching identifying marking to or clearly signing the work of art.

(2) The work of fine art constitutes property held in trust by the consignee for the benefit of the consignor and is not subject to claim by a creditor of the consignee.

(3) The consignee is responsible for the loss of or damage to the work of fine art while in the possession of or on the premises of the consignee.

(4) The proceeds from the sale of the work of fine art constitute funds held in trust by the consignee for the benefit of the consignor. The proceeds must first be applied to pay any balance due to the consignor, unless the consignor expressly agrees otherwise in writing.

History: En. Sec. 3, Ch. 534, L. 1985.

Cross-References

Law of agency, Title 28, ch. 10.

Consignment sales by commission merchants, Title 30, ch. 11, part 4.

Ownership of art as product of the mind, 30-13-131.

Trustees, Title 72, ch. 33, part 6.

Beneficiaries, Title 72, ch. 33, part 7.

22-2-504. Subsequent sale — payment to consignor. A work of fine art received as a consignment remains trust property, notwithstanding the subsequent purchase thereof by the consignee directly or indirectly for the consignee's own account, until the price is paid in full to the consignor. If the work is resold to a bona fide purchaser before the consignor has been paid in full, the proceeds of the resale received by the consignee constitute funds held in trust for the benefit of the consignor to the extent necessary to pay any balance due to the consignor and the trusteeship continues until the fiduciary obligation of the consignee with respect to the transaction is discharged in full.

History: En. Sec. 4, Ch. 534, L. 1985.

22-2-505. Waiver void — exemption from U.C.C. (1) Any provision of a contract or agreement by which the consignor waives any provision of this part is void.

(2) This part is not subject to the provisions of Title 30, chapters 1 through 9.

History: En. Sec. 5, Ch. 534, L. 1985.

Part 6

American Indian Monument and Tribal Circle of Flags

22-2-601. American Indian monument and tribal flag circle — competition for design. (1) The state of Montana shall erect on the grounds of the capitol complex a monument to American Indians and a Montana tribal flag circle in recognition of American Indians' contributions to this state and nation.

(2) The Montana arts council shall advertise and conduct a competition among all Montanans for a design for the monument and flag circle.

History: En. Sec. 1, Ch. 755, L. 1991.

22-2-602. Advisory committee — composition — duties. (1) To coordinate the project provided for in 22-2-601, the governor shall appoint an advisory committee composed of the following 11 members:

(a) a representative from the Montana arts council;

(b) a representative from each of the state's seven Indian reservations;

(c) a representative from the architecture and engineering division of the department of administration;

(d) the governor's state coordinator of Indian affairs or the coordinator's designee; and

(e) a representative of the Montana historical society.

(2) The advisory committee shall review the proposals submitted in the design competition for the monument and flag circle and select an appropriate design.

(3) The advisory committee shall make recommendations to the department of administration for an appropriate site for the monument and the flag circle on the grounds of the capitol complex. The monument and flag circle may be located separately on the grounds.

(4) The advisory committee shall solicit and accept private contributions to finance the monument and the placement of the monument and the flag circle on the grounds of the capitol complex.

History: En. Sec. 2, Ch. 755, L. 1991.

CHAPTER 3

ANTIQUITIES

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Chapter Cross-References

Acquisition of land for museums, 7-16-2105, 7-16-4104.

County museums, Title 7, ch. 16, part 22.

Authorization to establish cultural facilities, 7-16-4103.

Military archives, 10-1-102.

Preservation of historical sites and monuments, 23-1-101.

Fire safety requirements in museums, 50-61-101.

Preservation of natural areas, Title 76, ch. 12, part 1.

Presentation of hides to museums, 81-7-105, 81-7-120.

Part 1
Historical Society

Part Cross-References

Distribution of Administrative Rules of Montana to State Historical Society, 2-4-313.

Creation of advisory councils, 2-15-122.

Agency allocation to State Board of Education, 2-15-1511.

Boards and offices associated with State Historical Society, 2-15-1512.

Distribution of Senate and House Journals and Session Laws, 5-11-203.

Authorization to levy tax for cultural facilities, 7-16-4105.

Receipt of historical, aesthetic, and cultural objects, sites, or buildings as in-kind payment of inheritance or estate taxes, 72-16-445 through 72-16-450.

22-3-101. Historical society. The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana entitled "An Act to Incorporate the Historical Society of Montana", approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved March 4, 1891, entitled "An Act Concerning the Historical Society for the State of Montana and Making an Appropriation Therefor" and by "An Act to Perpetuate the Historical Society of the State of Montana", approved March 1, 1949, is hereby continued and perpetuated as the Montana historical society and as such constitutes an agency of state government for the use, learning, culture, and enjoyment of the citizens of the state and for the acquisition, preservation, and protection of historical records, art, archival, and museum objects, historical places, sites, and monuments and the custody, maintenance, and operation of the historical library, museums, art galleries, and historical places, sites, and monuments.

History: En. Sec. 1, Ch. 47, L. 1963; R.C.M. 1947, 44-516.

22-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the executive committee of the board of trustees of the Montana historical society.

(2) "Historic records" means manuscripts, papers, maps, charts, journals, diaries, photographs, business records, voice recordings, films, video tapes, or other records illustrative of the history of Montana in particular and generally of the region.

(3) "Historic records network" means an agreement between the Montana historical society and the Montana university system to facilitate exchange and cooperation in the use, acquisition, and preservation of historic records.

(4) "Society" means the Montana historical society and includes:

(a) the historical library and its contents;

(b) any museums and art galleries and their contents acquired by the trustees;

(c) any historical places, sites, or monuments acquired or developed by the society;

(d) any divisions, departments, and activities operated in conjunction with the historical library as are established by the trustees; and

(e) any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture, or fixtures acquired by the trustees.

(5) "Trustees" means the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 47, L. 1963; amd. Sec. 5, Ch. 3, L. 1977; amd. Sec. 1, Ch. 366, L. 1977; R.C.M. 1947, 44-517.

22-3-103. Historical library — independence from other libraries, museums, or galleries. (1) There is a historical library, to be maintained and operated by the Montana historical society.

(2) The historical library and any historical museum administered by the society in accordance with the provisions of this part shall be independent of any other library, museum, or gallery owned, maintained, or operated by the state of Montana.

History: (1)En. 44-515.1 by Sec. 4, Ch. 3, L. 1977; Sec. 44-515.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 47, L. 1963; amd. Sec. 6, Ch. 3, L. 1977; Sec. 44-518, R.C.M. 1947; R.C.M. 1947, 44-515.1, 44-518.

22-3-104. Appointment and qualifications of board of trustees. (1) The government and administration of the society are vested in a board of 15 trustees appointed by the governor, by and with the consent of the senate. Three each of the original members of the board shall be appointed for 1-, 2-, 3-, 4-, and 5-year terms. An appointment to replace a member whose term has expired shall be for 5 years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

(2) Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest. The governor, insofar as possible, shall appoint trustees from the various geographical areas of the state.

(3) Of the 15 trustees, at least one shall be a recognized historian and at least one shall be a recognized archaeologist.

(4) The governor shall appoint these professionals to the board of trustees as vacancies occur.

History: (1)En. Sec. 4, Ch. 47, L. 1963; Sec. 44-519, R.C.M. 1947; (2) thru (4)En. Sec. 5, Ch. 47, L. 1963; amd. Sec. 7, Ch. 3, L. 1977; amd. Sec. 1, Ch. 520, L. 1977; Sec. 44-520, R.C.M. 1947; R.C.M. 1947, 44-519, 44-520.

Cross-References

Boards and offices associated with State Historical Society, 2-15-1512.

22-3-105. Compensation and expenses of trustees. Each member of the board of trustees shall be compensated and receive travel expenses as provided for in 2-15-124.

History: En. 82A-507 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 51, L. 1974; amd. Sec. 1, Ch. 203, L. 1975; amd. Sec. 23, Ch. 453, L. 1977; R.C.M. 1947, 82A-507(3); amd. Sec. 1, Ch. 3, L. 1979; amd. Sec. 8, Ch. 650, L. 1985.

22-3-106. Executive committee. The trustees may select an executive committee of five trustees and delegate to the committee such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

History: En. Sec. 6, Ch. 47, L. 1963; R.C.M. 1947, 44-521.

22-3-107. Authority of board. The powers and duties of the trustees are as follows:

(1) to elect annually from among their number a president, a vice president, and a secretary;

(2) to adopt bylaws for their own government and to make rules, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people;

(3) to appoint a director, fix the director's salary, and prescribe the director's duties and responsibilities;

(4) to create classes of memberships in the society as they consider desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for memberships;

(5) to sell or exchange publications and other museum or art objects and use the money arising from sales for the operation of the society and for the acquisition of historical materials and objects of art;

(6) to sell or exchange surplus or duplicate books, surplus museum or art objects or artifacts not pertinent to the region encompassed by the Montana historical society mission and to use the money arising from the sales exclusively for acquisitions of library, art, and museum artifacts;

(7) to see that the collections and properties of the society are maintained in good order and repair;

(8) to report to the governor and, as provided in 5-11-210, the legislature biennially. The report must include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(9) to accept, receive, and administer in the name of the society any gifts, donations, properties, securities, bequests, and legacies that may be made to the society. Money in the amount of less than $500 received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, must be deposited in the state treasury and used for the general operation of the society. Unless otherwise provided by donor, donations, gifts, bequests, or legacies in the amount of $500 or more must be deposited in the acquisitions trust established in 22-3-113.

(10) to collect, assemble, preserve, and display, when appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular and generally of the Pacific Northwest, Northern Rocky Mountain, and Northern Great Plains regions and of the United States of America when pertinent;

(11) to procure from pioneers, early settlers, and others narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of

the west, and all other related documents of Montana's history, development, and society;

(12) to gather contemporary information, specimens, and all other materials that exhibit faithfully the distinctive historical and contemporary characteristics of the area, with particular attention to Indian, military, and pioneer artifacts and implements;

(13) to collect and preserve such natural history objects as fossils, plants, minerals, and animals;

(14) to collect and preserve books, maps, manuscripts, and other materials as will tend to facilitate historical, scientific, and antiquarian research;

(15) to promote the study of Montana history by lectures and publications;

(16) to publish a roadside history of Montana, with maps, photographs, and text that will enable tourists, citizens, and students to understand the history of the countryside seen from the state's main roads;

(17) to generally foster and encourage the fine arts and cultural activities in Montana;

(18) to receive for and on behalf of the state, by donation or otherwise, art objects of any kind and description and to exhibit and circulate the objects in Montana and elsewhere;

(19) to microfilm papers or documents in danger of disappearance or injury; and

(20) to coordinate the administration of the historic records network established in 22-3-211.

History: En. Sec. 8, Ch. 47, L. 1963; amd. Sec. 1, Ch. 204, L. 1975; amd. Sec. 2, Ch. 366, L. 1977; R.C.M. 1947, 44-523; amd. Sec. 1, Ch. 419, L. 1983; amd. Sec. 29, Ch. 112, L. 1991; amd. Sec. 3, Ch. 4, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 4 in (9), at beginning of second sentence, substituted "Money in the amount of less than $500" for "Moneys" and inserted third sentence requiring deposit of amounts of $500 or more in the acquisitions trust; and made minor changes in style. Amendment effective July 1, 1993.

22-3-108. Function of director — employment of assistants. The director is fully responsible for the immediate direction, management, and control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

History: En. Sec. 9, Ch. 47, L. 1963; R.C.M. 1947, 44-524.

22-3-109. Official seal. The design of the official seal of the society shall be substantially as follows: a central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background, and directly beneath it the figures "1865". The seal shall be 2 inches in diameter and surrounded by the words, "Montana Historical Society Seal".

History: En. Sec. 10, Ch. 47, L. 1963; R.C.M. 1947, 44-525.

22-3-110. Decor of quarters. The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished, and maintained in dignity and in harmony with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

History: En. Sec. 11, Ch. 47, L. 1963; R.C.M. 1947, 44-526.

22-3-111. Financing of society. The society may engage in such fundraising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, magazines, pamphlets, and museum objects which are appropriate and will bring credit to the society and to Montana. It may also receive fees, commissions, and royalties on the display and sale of arts and crafts. All profits, revenues, royalties, or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development, and operation of the society.

History: En. Sec. 12, Ch. 47, L. 1963; R.C.M. 1947, 44-527.

Cross-References

Authority for use of certain magazine subscription fees for current publication, 17-8-107.

22-3-112. Renumbered 22-2-301 by Code Commissioner, 1983.

22-3-113. Acquisitions trust. There is an account in the fiduciary fund category nonexpendable trust fund type to be known as the Montana historical society acquisitions trust, to be used exclusively for the acquisition of items or collections as provided in 22-3-114.

History: En. Sec. 1, Ch. 4, L. 1993.

Compiler's Comments

Effective Date: Section 6, Ch. 4, L. 1993, provided: "[This act] is effective July 1, 1993."

22-3-114. Use of acquisitions trust funds — principal nonexpendable — investment of principal — reversion of unspent revenue. (1) The principal of the acquisitions trust established in 22-3-113 is intended to be a permanent, nonexpendable trust subject to investment by the board of investments in accordance with investment principles established for the investment of state funds in Title 17, chapter 6, part 2.

(2) Unless otherwise provided by the donor, donations of $500 or more received pursuant to 22-3-107(9) and revenue earned by the Montana historical society from sales provided for by 22-3-107(6) must be placed in the acquisitions trust.

(3) Interest earned on the principal of the acquisitions trust may be used only for the purpose of acquiring society library, museum, archive, and photoarchive items or collections.

(4) Revenue that is not expended on appropriate acquisitions authorized in subsection (3) and that remains at the end of each fiscal year reverts to the principal of the acquisitions trust for investment as provided in subsection (1).

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to

the expenditure of revenue made available to the society from the acquisitions trust.

History: **En. Sec. 2, Ch. 4, L. 1993.**

Compiler's Comments

Effective Date: Section 6, Ch. 4, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 2
Preservation of Records

Part Cross-References

Natural resource information system and natural heritage program, Title 90, ch. 15.

22-3-201. Public policy. The legislature declares that it is the public policy of the state of Montana that noncurrent records of permanent value to the state and to local governments should be preserved and protected; that the operations of state government should be made more efficient, more effective, and more economical through current records management; and that to the end that the people may receive maximum benefit from a knowledge of state and local government affairs, the state and local governments should preserve noncurrent records of permanent value for study and research.

History: **En. Sec. 1, Ch. 108, L. 1969; R.C.M. 1947, 82-3207; amd. Sec. 16, Ch. 420, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 420 in three places inserted references to local governments; and made minor changes in style. Amendment effective April 20, 1993.

22-3-202. Archives created — appointment, duties, and compensation of archivist. There is a state archives in the Montana historical society for the preservation of noncurrent records of permanent value to the state and local governments and for records management. The director of the Montana historical society shall appoint a state archivist, who serves at the pleasure of the director, define the archivist's duties, and fix the archivist's compensation with the approval of the board of trustees of the Montana historical society.

History: **En. Sec. 2, Ch. 108, L. 1969; R.C.M. 1947, 82-3208; amd. Sec. 17, Ch. 420, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 420 in first sentence, near middle after "state", inserted "and local governments"; and made minor changes in style. Amendment effective April 20, 1993.

22-3-203. Preservation of noncurrent records of permanent value. The state archivist shall preserve noncurrent records of permanent value to the state and is responsible for the ultimate preservation of local government records of permanent value. Upon request, the archivist shall assist and advise in the establishment of records management programs in the executive, legislative, and judicial branches of state government and in local governments, with due regard to the functions of the officers and agencies involved.

History: **En. Sec. 3, Ch. 108, L. 1969; amd. Sec. 1, Ch. 41, L. 1973; R.C.M. 1947, 82-3209; amd. Sec. 18, Ch. 420, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 420 in first sentence, after "value", inserted "to the state and is responsible for the ultimate preservation of local government records of permanent value" and in second sentence, after "state government", inserted "and in local governments"; and made minor changes in style. Amendment effective April 20, 1993.

Cross-References

Department of Administration records preservation, 2-6-203, 2-6-205.

Authority of the Board of Trustees of the State Historical Society, 22-3-107.

22-3-204 through 22-3-210 reserved.

22-3-211. Historic records network — creation — purpose. (1) The trustees of the Montana historical society shall establish and coordinate the administration of an historic records network.

(2) The staff of the society shall aid staff archivists and librarians at the university units in their work of acquiring, cataloguing, processing, microfilming, and preserving historic records.

History: En. 44-523.1 by Sec. 3, Ch. 366, L. 1977; R.C.M. 1947, 44-523.1.

Cross-References

Authority of Board of Trustees of the State Historical Society, 22-3-107.

22-3-212. Funding. The historic records network shall operate within the budgets of the historical society and the university system.

History: En. 44-523.2 by Sec. 4, Ch. 366, L. 1977; R.C.M. 1947, 44-523.2.

22-3-213 through 22-3-220 reserved.

22-3-221. Storing and safekeeping of war records. The board of trustees of the Montana historical society is hereby authorized and directed to set apart a suitable room in the buildings under their jurisdiction for the storing and safekeeping of such archives, records, etc., of the grand army of the republic and the united Spanish war veterans, and said room shall be suitably furnished, and the librarian for the Montana historical society shall be custodian of said archives, records, etc.

History: En. Sec. 1, Ch. 32, L. 1913; amd. Sec. 2, Ch. 97, L. 1915; re-en. Sec. 321, R.C.M. 1921; amd. Sec. 1, Ch. 96, L. 1927; re-en. Sec. 321, R.C.M. 1935; amd. Sec. 3, Ch. 93, L. 1953; R.C.M. 1947, 82-2502.

Cross-References

Duties of Department of Military Affairs, 10-1-102.

Part 3

Veterans' and Pioneers' Memorial Building

22-3-301. Veterans' and pioneers' memorial building. There is a veterans' and pioneers' memorial building located in Helena.

History: En. 78-201.1 by Sec. 8, Ch. 3, L. 1977; R.C.M. 1947, 78-201.1.

22-3-302. Use of building. The veterans' and pioneers' memorial building shall constitute a perpetual memorial to the war veterans and the pioneers of Montana, and said building shall be devoted to the use of the united Spanish war veterans of Montana, the veterans of foreign wars of Montana, the American legion of Montana, the disabled American veterans of Montana, the World War I veterans of Montana, the Montana historical society, the society of Montana pioneers, and the sons and daughters of Montana pioneers and for the housing of books, records, documents, and other property of such veterans and organizations; and there shall be provided in said building appropriate office quarters for the state headquarters and officers and employees of such veterans and organizations and for the librarian and other employees of the Montana historical society.

History: En. Sec. 2, Ch. 204, L. 1945; amd. Sec. 1, Ch. 54, L. 1961; amd. Sec. 27, Ch. 271, L. 1963; R.C.M. 1947, 78-202.

22-3-303. Gifts for building. The state of Montana is hereby authorized to receive gifts, legacies, and donations of money or other property for the erection or maintenance of the memorial building herein provided for, and all such gifts, legacies, and donations are hereby dedicated to such purpose.

History: En. Sec. 9, Ch. 204, L. 1945; R.C.M. 1947, 78-209.

Part 4
Antiquities

Part Cross-References

Natural resource information system and natural heritage program, Title 90, ch. 15.

Historical, aesthetic, and cultural objects, sites, or buildings — in-kind payment of inheritance and estate taxes, 72-16-445 through 72-16-450.

22-3-401 through 22-3-413. Repealed. Sec. 16, Ch. 563, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

22-3-401. En. Sec. 1, Ch. 502, L. 1973; R.C.M. 1947, 81-2501.

22-3-402. En. Sec. 2, Ch. 502, L. 1973; R.C.M. 1947, 81-2502.

22-3-403. En. Sec. 3, Ch. 502, L. 1973; amd. Sec. 1, Ch. 440, L. 1977; R.C.M. 1947, 81-2503.

22-3-404. En. Sec. 4, Ch. 502, L. 1973; amd. Sec. 2, Ch. 440, L. 1977; R.C.M. 1947, 81-2504.

22-3-405. En. Sec. 5, Ch. 502, L. 1973; amd. Sec. 3, Ch. 440, L. 1977; R.C.M. 1947, 81-2505.

22-3-406. En. Sec. 6, Ch. 502, L. 1973; amd. Sec. 4, Ch. 440, L. 1977; R.C.M. 1947, 81-2506.

22-3-407. En. Sec. 7, Ch. 502, L. 1973; amd. Sec. 5, Ch. 440, L. 1977; R.C.M. 1947, 81-2507.

22-3-408. En. Sec. 8, Ch. 502, L. 1973; amd. Sec. 9, Ch. 3, L. 1977; amd. Sec. 6, Ch. 440, L. 1977; R.C.M. 1947, 81-2508.

22-3-409. En. Sec. 9, Ch. 502, L. 1973; amd. Sec. 7, Ch. 440, L. 1977; R.C.M. 1947, 81-2509.

22-3-410. En. Sec. 10, Ch. 502, L. 1973; amd. Sec. 10, Ch. 3, L. 1977; amd. Sec. 8, Ch. 440, L. 1977; R.C.M. 1947, 81-2510.

22-3-411. En. Sec. 11, Ch. 502, L. 1973; amd. Sec. 9, Ch. 440, L. 1977; R.C.M. 1947, 81-2511.

22-3-412. En. Sec. 12, Ch. 502, L. 1973; amd. Sec. 10, Ch. 440, L. 1977; R.C.M. 1947, 81-2512.

22-3-413. En. Sec. 13, Ch. 502, L. 1973; amd. Sec. 11, Ch. 440, L. 1977; R.C.M. 1947, 81-2513.

22-3-414 through 22-3-420 reserved.

22-3-421. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Antiquities permit" means the permit granted for excavation, removal, or restoration of heritage properties or paleontological remains provided for in 22-3-432.

(2) "Heritage property" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archaeology, or culture.

(3) "Historic preservation office" means the office within the Montana historical society provided for in 2-15-1512.

(4) "Historic preservation officer" means the officer provided for in 2-15-1512.

(5) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research.

(6) "Preservation review board" means the board provided for in 2-15-1512.

(7) "Register" means the National Register of Historic Places, the official list of the nation's heritage properties worthy of preservation because of national, state, or local significance.

(8) "Registered property" means any heritage property listed in the register.

(9) "State agency" means any executive agency of the state of Montana.

History: En. Sec. 4, Ch. 563, L. 1979; amd. Sec. 1, Ch. 323, L. 1987.

22-3-422. Duties of preservation review board. The preservation review board shall:

(1) recommend nominations to the register;

(2) approve or disapprove all nominations to the register;

(3) approve or disapprove additions to statewide inventories of heritage properties;

(4) review the annual work program that recommends preservation goals and grant allocations for the next succeeding fiscal year; and

(5) act in an advisory capacity to the historic preservation office and to state agencies.

History: En. Sec. 5, Ch. 563, L. 1979.

22-3-423. Duties of historic preservation officer. The historic preservation officer has the following duties and responsibilities:

(1) follow necessary procedures to qualify the state for money that is now or will be made available under any act of congress of the United States or otherwise for purposes of historic preservation;

(2) conduct an ongoing statewide survey to identify and document heritage properties and paleontological remains;

(3) maintain a state inventory file of heritage properties and paleontological remains and maintain a repository for all such inventory work done in the state;

(4) evaluate and formally nominate potential register properties according to the criteria established by the register;

(5) prepare and annually review the state preservation plan, register nominations, and historic preservation grant activity;

(6) maintain, publish, and disseminate information relating to heritage properties and paleontological remains in the state;

(7) cooperate with and assist local, state, and federal government agencies in comprehensive planning that allows for the preservation of heritage properties and paleontological remains;

(8) enter into cooperative agreements with the federal government, local governments, and other governmental entities or private landowners or the owners of objects to ensure preservation and protection of registered properties;

(9) adopt rules outlining procedures by which a state agency that has no approved rules under 22-3-424(1) shall systematically consider heritage properties or paleontological remains on lands owned by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter such properties;

(10) protect from disclosure to the public any information relating to the location or character of heritage properties when disclosure would create a substantial risk of harm, theft, or destruction to such resources or to the area or place where the resources are located; and

(11) any other necessary or appropriate activity permitted by law to carry out and enforce the provisions of this part.

History: En. Sec. 6, Ch. 563, L. 1979; amd. Sec. 1, Ch. 351, L. 1983; amd. Sec. 2, Ch. 323, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Use of heritage properties for state agency new space needs, 2-17-107.

Land preservation, 23-1-106 through 23-1-108.

State planning on historical sites, 90-1-102.

22-3-424. Duties of state agencies. State agencies shall:

(1) in consultation with the historical society adopt rules for the identification and preservation of heritage properties and paleontological remains on lands owned by the state to avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on lands owned by the state or, in the absence of such rules, act in compliance with rules adopted under 22-3-423;

(2) identify and develop, in consultation with the historic preservation officer, methods and procedures to ensure that the identification and protection of heritage properties and paleontological remains on lands owned by the state are given appropriate consideration in state agency decisionmaking;

(3) deposit in the historic preservation office all inventory reports, including maps, photographs, and site forms, of heritage properties and paleontological remains.

History: En. Sec. 9, Ch. 563, L. 1979; amd. Sec. 2, Ch. 351, L. 1983.

Cross-References

Land preservation, 23-1-106, 23-1-107.

State planning on historical sites, 90-1-102.

22-3-425 through 22-3-430 reserved.

22-3-431. Registration of heritage properties. (1) Any citizen of Montana may submit to the historic preservation officer for his consideration the necessary forms to nominate heritage properties to the register.

(2) (a) For private properties, the historic preservation officer shall notify the owner of the property and allow him a reasonable period of time to concur or object to the nomination of the property for registration. If the owner of the property, or a majority of owners if the property has more than one owner, objects to registration, the historic preservation officer may not nominate the property unless the objection is withdrawn. If there are no such objections, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register.

(b) The historic preservation officer and the preservation review board may review the nomination of property that was not nominated due to owner objection to determine whether the property is eligible for registration. If the historic preservation officer and the preservation review board determine that the property is eligible for registration, the preservation officer shall provide for the register information about the property for determination of registration eligibility.

(c) The historic preservation officer shall follow the procedures mandated by 36 CFR 60.6 relating to seeking property owner concurrence or objection to registration.

(3) For lands owned by the state, a county, or a municipality, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register. The historic preservation officer shall notify the appropriate governmental agency and give public notice when any such governmental property is being considered for nomination. Unless agency or public objections are submitted in writing within 30 days after notification, the historic preservation officer shall complete the nominations. When an agency or any citizen of Montana submits written objections, the historic preservation officer shall consider the objections and may conduct a public hearing. If a hearing is held, it shall be commenced within 30 days after the final date for submission of written objections. Within 60 days after submission of the objections or after the public hearing, the historic preservation officer shall make a final decision on the proposed registration and prepare a statement responsive to the objections submitted.

History: En. Sec. 7, Ch. 563, L. 1979; amd. Sec. 1, Ch. 199, L. 1983; amd. Sec. 3, Ch. 323, L. 1987.

Cross-References

Natural resource information system and natural heritage program, Title 90, ch. 15.

22-3-432. Antiquities permits. (1) No person may excavate, remove, or restore any heritage property or paleontological remains on lands owned by the state without first obtaining an antiquities permit from the historic preservation officer.

(2) Antiquities permits are to be granted only after careful consideration of the application for a permit and after consultation with the appropriate state agency. Permits are subject to strict compliance with the following guidelines:

(a) Antiquities permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions, societies, or persons with a view toward dissemination of knowledge about cultural properties, provided no such permit may be granted unless the historic preservation officer is satisfied that the applicant possesses the necessary qualifications to guarantee the proper excavation of those sites and objects that may add substantially to man's knowledge about Montana and its antiquities.

(b) The antiquities permit must specify that a summary report of such investigations, containing relevant maps, documents, drawings, and photographs, be submitted to the historic preservation officer. The historic preservation officer shall determine the appropriate time period allowable between all work undertaken and submission of the summary report.

(3) All heritage property and paleontological remains collected under an antiquities permit are the permanent property of the state and must be deposited in museums or other institutions within the state or loaned to qualified institutions outside the state, unless otherwise provided for in the antiquities permit.

(4) An antiquities permit is not a substitution for any other type of permit that a state agency may require for other purposes.

History: En. Sec. 8, Ch. 563, L. 1979.

22-3-433. Environmental review process. (1) Each state agency responsible for the preparation of an environmental impact statement in accordance with the Montana Environmental Policy Act shall, as a part of its evaluation and study process, consult with and obtain the comments of the historic preservation officer concerning the identification and location of heritage properties and paleontological remains on lands owned by the state that may be adversely impacted by the proposed action. However, where the grant of an interest in state land requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, the environmental impact statement shall be limited to an evaluation of the heritage properties and paleontological remains located in, on, under, and within only the affected state land.

(2) When heritage properties and paleontological remains are located and identified as described in subsection (1), the responsible state agency, in consultation with the historic preservation officer and the preservation review board, shall include as part of its environmental impact statement a plan for the avoidance or mitigation of damage to heritage properties and paleontological remains to the greatest extent practicable. Whenever necessary or appropriate, the state agency may require an applicant for a lease, permit, license, or other approval for use of land owned by the state to develop an avoidance or mitigation plan in consultation with the historic preservation officer and the preservation review board.

History: En. Sec. 10, Ch. 563, L. 1979.

Cross-References

MEPA — Environmental Impact Statements, Title 75, ch. 1, part 2.

22-3-434. Denial of applications. State agencies may deny or approve with conditions any application for an easement, lease, permit, contract, license, or certificate in order to protect heritage properties and paleontological remains that cannot be properly mitigated; provided that this section is limited only to heritage properties and paleontological remains which have been located as a part of the environmental impact statement reviews process as described in 22-3-433.

History: En. Sec. 11, Ch. 563, L. 1979.

22-3-435. Report of discovered heritage properties or paleontological remains. Any person conducting activities, including survey, excavation, or construction, who discovers on any lands owned by the state any heritage property or paleontological remains as defined in 22-3-421 or who finds that an operation licensed or otherwise entitled by the state may damage heritage properties or paleontological remains on any lands owned by the state shall promptly report to the historic preservation officer the discovery of such findings and shall take all reasonable steps to ensure preservation of the heritage property or paleontological remains.

History: En. Sec. 12, Ch. 563, L. 1979.

Cross-References

State planning on historical sites, 90-1-102.

22-3-436 through 22-3-440 reserved.

22-3-441. Restrictions on reproduction or sale of heritage property and paleontological remains. (1) No person may reproduce or falsely identify any heritage property or paleontological remains with the intent to sell the property or remains as an original.

(2) No person may sell any heritage property or paleontological remains with the knowledge that the property or remains have previously been collected or excavated in violation of this section, 22-3-432, or 22-3-435.

History: En. Sec. 13, Ch. 563, L. 1979.

22-3-442. Criminal penalty. A person violating any provision of 22-3-432, 22-3-435, or 22-3-441 is guilty of a misdemeanor and upon conviction shall be fined not more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both. Each day of continued violation of any provision of 22-3-432, 22-3-435, or 22-3-441 constitutes a distinct and separate offense.

History: En. Sec. 14, Ch. 563, L. 1979.

Part 5

Museum Loan Act

Part Cross-References

County museums, Title 7, ch. 16, parts 21 and 22.

Municipal museums, 7-16-4103, 7-16-4105.

Donations of predatory animal hides and specimens, 81-7-105, 81-7-120.

22-3-501. Short title. This part may be cited as the "Museum Loan Act".

History: En. Sec. 1, Ch. 630, L. 1985.

22-3-502. Purpose. The people of Montana have an interest in preserving and protecting objects of scientific, historic, artistic, or cultural value and making them accessible to the public. The purpose of this part is to serve this interest by establishing a uniform procedure for lenders to preserve their interests in property loaned to museums; to require lenders to notify museums of changes of address and transfers of ownership of loaned property; and to vest title to unclaimed property in the museum that holds it.

History: En. Sec. 2, Ch. 630, L. 1985.

22-3-503. Definitions. As used in this part, the following definitions apply:

(1) "Loan" means a deposit of property not accompanied by a transfer of title to the property.

(2) "Museum" means an institution located in Montana and operated by a nonprofit corporation or a public agency primarily for educational, scientific,

or aesthetic purposes, and that owns, borrows, or cares for and exhibits, studies, or catalogs property.

(3) "Property" includes any tangible object, animate or inanimate, that has intrinsic historic, artistic, scientific, or cultural value.

History: En. Sec. 3, Ch. 630, L. 1985.

22-3-504. Loans for an indefinite term. (1) If a museum accepts a loan of property for an indefinite term or for a term longer than 7 years, the museum must inform the lender in writing at the time of the loan of the provisions of this part.

(2) For the purposes of this part, a loan for a specified term becomes a loan for an indefinite term if the property remains in the custody of the museum after the specified term expires.

History: En. Sec. 4, Ch. 630, L. 1985.

22-3-505. Manner of giving notice to lender. When the provisions of this part require a museum to give notice to a lender, the museum is considered to have given notice if the museum mails the notice to the lender at the lender's address and proof of receipt is received by the museum within 30 days from the date the notice was mailed. If the museum does not have a current address for the lender or if proof of receipt is not received by the museum, notice is considered given if the museum publishes it at least once a week for 3 consecutive weeks in a newspaper of general circulation in both the county in which the museum is located and the county of the lender's most recent address as shown on the museum's records.

History: En. Sec. 5, Ch. 630, L. 1985.

22-3-506. Notice of intent to preserve interest. (1) The owner of property on loan to a museum may file with the museum a notice of intent to preserve an interest in the property. This notice must be in writing and must contain a description of the property adequate to enable the museum to identify the property.

(2) The filing of a notice of intent to preserve an interest in property on loan to a museum does not validate or make enforceable any claim that would be extinguished under the terms of a written loan agreement or that would otherwise be invalid or unenforceable.

(3) (a) Unless the loaned property is returned to the claimant, the museum shall retain for not less than 25 years the original or an accurate copy of any notice filed by a claimant under this section.

(b) The fact that the museum retains a notice may not be construed to mean that the notice is sufficient or accurate or that it is effective to preserve an interest in property on loan to the museum.

(4) A notice of intent to preserve an interest in property on loan to a museum satisfies the requirements of subsection (1) if it is in substantially the following form and contains the information and attachments described:

NOTICE TO PRESERVE AN INTEREST IN PROPERTY ON LOAN TO A MUSEUM

Name of Museum . . . . Date. . . . . .
Claimant's Name . . . .
Address . . . .
(street address; city; state; zip code)
Telephone . . . .
Date Property Loaned . . . .
Description of Property . . . .
. . . .
. . . .

Documentation of ownership — check the appropriate box:

☐ Legible copy of original loan receipt attached

☐ Other documentation attached

If you are not the original lender, describe the origin of your interest in the property and attach a copy of any document that creates your interest:

. . . .
. . . .
. . . .

I understand that I must promptly notify the museum in writing of any change of address or change in ownership of the loaned property.

I declare under penalty of false swearing that to the best of my knowledge the information contained in this notice is true.

SIGNED . . . .
(claimant)

OR I declare under penalty of false swearing that I am authorized to act on behalf of the claimant and am informed and believe that the information contained in this notice is true.

SIGNED . . . .
(claimant's representative)

History: **En. Sec. 6, Ch. 630, L. 1985.**

22-3-507. Notice of change of address or transfer of ownership. The owner of property on loan to a museum shall notify the museum in writing of any change of address or change in ownership of the property.

History: **En. Sec. 7, Ch. 630, L. 1985.**

22-3-508. Conservation or disposal of loaned property. (1) Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to or dispose of property on loan to the museum without the lender's permission if immediate action is required to protect the property on loan or other property in the custody of the museum or if the property on loan has become a hazard to the health and safety of the public or the museum staff and:

(a) the museum is unable to reach the lender at the lender's last address of record; or

(b) the lender will not agree to the protective measures the museum recommends, yet is unwilling or unable to terminate the loan and retrieve the property.

(2) If a museum applies conservation measures to or disposes of property under the provisions of this section, the museum:

(a) has a lien on the property and on the proceeds of any disposition thereof for the costs incurred by the museum; and

(b) is not liable for injury to or loss of the property if it:

(i) had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum or that the property on loan was a hazard to the health and safety of the public or the museum staff; and

(ii) exercised reasonable care in the choice and application of conservation measures.

History: En. Sec. 8, Ch. 630, L. 1985.

22-3-509. Notice of injury or loss. (1) A museum shall give a lender prompt notice of any known injury to or loss of property on loan.

(2) A notice of injury or loss must contain the lender's name, the lender's most recent address as shown on the museum's records, the date of the loan, and the name, address, and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan.

(3) If the museum is unable to give the lender the notice required by this section by mail, the museum shall publish the notice as provided in 22-3-505 and in addition shall include a statement containing substantially the following information:

The records of . . . .
(name of museum)

indicate that you have property on loan to it. Your failure to notify it in writing of a change of address or ownership may result in the loss of rights in the loaned property. See 22-3-507, MCA.

History: En. Sec. 9, Ch. 630, L. 1985.

22-3-510. Notice of intent to terminate loan. A museum may give the lender notice of its intent to terminate a loan made for an indefinite term or for a term longer than 7 years. A notice of intent to terminate a loan must include the lender's name, the lender's most recent address as shown on the museum's records, the date of the loan, and the name, address, and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan. In addition, it must include a statement containing substantially the following information:

The records of . . . .
(name of museum)

indicate that you have property on loan to it. The institution wishes to terminate the loan. You must contact the institution, establish your ownership of the property, and make arrangements to collect the property. If you fail to do so, you will be considered to have donated the property to the institution. See 22-3-504, MCA.

History: En. Sec. 10, Ch. 630, L. 1985.

22-3-511 through 22-3-520 reserved.

22-3-521. Limitation on action against the museum. (1) No action may be brought against a museum for damages because of injury to or loss of property loaned to the museum more than 3 years from the date the museum gives the lender notice of the injury or loss or 10 years from the date of the injury or loss, whichever occurs earlier.

(2) No action may be brought against a museum to recover property on loan if more than 3 years have passed from the date the museum gave the lender notice of its intent to terminate the loan as provided in 22-3-510.

(3) No action may be brought against a museum to recover property on loan if more than 25 years have passed from the date of the last written contact between the lender and the museum, as evidenced in the museum's records.

(4) A lender is considered to have donated loaned property to the museum if the lender fails to file an action to recover the property on loan to the museum within the periods specified in subsections (1) through (3).

(5) A person who purchases property from a museum acquires good title to the property if the museum has acquired title to the property pursuant to subsection (4).

(6) Notwithstanding subsections (3) and (4), a lender who was not given notice that the museum intended to terminate a loan and who proves that the museum received a notice of intent to preserve an interest in loaned property within the 25 years immediately preceding the filing of an action to recover the property may recover the property or, if the property has been disposed of, the reasonable value of the property at the time it was disposed of plus interest at 10% a year.

History: En. Sec. 11, Ch. 630, L. 1985.

22-3-522. Uniform Unclaimed Property Act superseded. The provisions of this part supersede the provisions of Title 70, chapter 9, parts 1 through 3, except that at its option, a museum may report property that has been on loan unclaimed by its owner for more than 5 years to the department of revenue for disposition as provided in Title 70, chapter 9, part 3.

History: En. Sec. 12, Ch. 630, L. 1985; amd. Sec. 21, Ch. 16, L. 1991.

22-3-523. Applicability. This part applies only to property loaned to a museum on or after October 1, 1985, or to existing loaned property with a market value of $1,000 or less at the time of disposal.

History: En. Sec. 14, Ch. 630, L. 1985.

Part 6
Local Management of Historic Properties

Part Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Tax-exempt property — categories, 15-6-201.

Antiquities, Title 22, ch. 3, part 4.

Nonprofit corporations, Title 35, ch. 2.

Historical, aesthetic, and cultural objects, sites, or buildings — in-kind payment of inheritance and estate taxes, 72-16-445 through 72-16-450.

22-3-601. Short title. This part may be cited as the "Local Management of Historic Sites and Buildings Act".

History: En. Sec. 1, Ch. 261, L. 1989.

22-3-602. Purpose. The purposes of this part are to:

(1) encourage the restoration, preservation, and maintenance of historic sites and buildings owned by the state of Montana;

(2) encourage the participation of Montana citizens and groups in the local management, on a nonprofit basis, of historic sites and buildings through the donation of time, materials, and resources toward the restoration and preservation of these properties;

(3) remove unnecessary barriers to the efficient and cost-effective management of historic sites and buildings by qualified and responsible local nonprofit corporations as contracted managers; and

(4) retain state ownership of historic sites and buildings and state control over decisions concerning their historic integrity and preservation so that the citizens of the state may realize the greatest benefits available from each property.

History: En. Sec. 2, Ch. 261, L. 1989.

22-3-603. Management of historic sites and buildings — contracts. (1) The Montana historical society may accept gifts, grants, bequests, or contributions of money, property, labor, or materials for use in the operation, maintenance, repair, preservation, or renovation of any historic site or building owned by the state of Montana.

(2) The Montana historical society may contract with a local nonprofit corporation for the operation, maintenance, preservation, repair, or renovation of any historic site or building owned by the state. The nonprofit corporation may not be considered a public agency for purposes of Title 18, except for the provisions in chapter 2, part 2, or for the purposes of other statutes applicable to the historical society if 25% of the total annual expenses for all costs of operation, maintenance, repair, preservation, and renovation of the historic site or building is provided by in-kind or donated labor or materials by or on behalf of the contracting local nonprofit corporation. The nonprofit corporation must conform to the provisions of Title 18, chapter 2, part 2, and Title 35, chapter 2.

(3) No contract may be entered into nor any other obligation incurred for the purposes in subsection (1) until money has been appropriated by the legislature or is otherwise available. If funds are otherwise available, Title 18, chapter 2, parts 1, 3, and 4, are not applicable.

(4) The Montana historical society may require a corporation managing a property pursuant to subsection (3) to deposit in a local financial institution

all profits, revenues, royalties, or fees received or all gifts, grants, bequests, or other contributions collected by the corporation for the benefit of the property. All funds must be accounted for pursuant to the management contract and audited quarterly by the society or its designee, and expenditures of the funds may be used only for the operation, maintenance, preservation, repair, renovation, and management of the property.

History: En. Sec. 3, Ch. 261, L. 1989.

Part 7

Law Enforcement Officers' Memorial

22-3-701. Creation of law enforcement officers' memorial. The memorial in the Montana law enforcement museum, located in the old Montana state prison, Deer Lodge, Montana, which is dedicated to the men and women who have served their communities and the state of Montana as law enforcement officers and have been killed or died in the line of duty, is designated as this state's official law enforcement officers' memorial.

History: En. Sec. 1, Ch. 45, L. 1991.

Part 8

Human Remains and Burial Site Protection

22-3-801. Short title. This part may be cited as the "Human Skeletal Remains and Burial Site Protection Act".

History: En. Sec. 1, Ch. 748, L. 1991.

22-3-802. Legislative findings and intent. (1) The legislature of the state of Montana finds that:

(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands that are not protected as cemeteries or graveyards under existing state law;

(b) marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds not protected as cemeteries or graveyards under existing state law are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;

(c) private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.

(d) while some human skeletal remains and burial sites may be of interest to science, the needs of the scientific community to gather information and material from burial sites must be balanced with the legal, moral, and religious rights and obligations of tribal groups, next of kin, or descendants;

(e) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial material; and

(f) notwithstanding any other provision of law, this part is the exclusive law governing the treatment of human skeletal remains, burial sites, and burial materials.

(2) It is the intent of the legislature to:

(a) ensure that all burials be accorded equal treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation;

(b) provide adequate protection for all interests related to any burial site encountered during archaeological excavation or agricultural, mining, construction, or other ground-disturbing activity on state and private lands without causing avoidable or undue delay or hardship for any person who has an interest in using the land on which the burial site is located;

(c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or religious affiliation with the burial site and balance those interests against the interests of scientists, landowners, and developers;

(d) provide to the board an exemption from the open meeting and public records laws when public disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site; and

(e) recognize the need for forensic examination of human skeletal remains, burial sites, and burial material if the county coroner, county attorney, or state medical examiner determines an examination is necessary under state law.

History: En. Sec. 2, Ch. 748, L. 1991.

22-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the burial preservation board established in 22-3-804.

(2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.

(3) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(4) "Human skeletal remains" means any part of the human body in any state of decomposition taken from a burial site.

(5) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, except a cemetery or graveyard protected under existing state law, where human skeletal remains are or have been interred.

(6) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.

(7) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations.

History: En. Sec. 3, Ch. 748, L. 1991.

22-3-804. Board — composition — rights — responsibilities. (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted by the Little Shell band of Chippewa Indians;

(c) one person appointed by the governor from a list of up to three nominees submitted by the Montana state historic preservation officer;

(d) one representative of the Montana archaeological association appointed by the governor from a list of up to three nominees submitted by the Montana archaeological association;

(e) one physical anthropologist appointed by the governor;

(f) one representative of the Montana coroners' association appointed by the governor from a list of up to three nominees submitted by the Montana coroners' association; and

(g) one representative of the public, appointed by the governor, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners' association.

(2) Members of the board shall serve staggered 2-year terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed $50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by 22-3-806;

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of this part;

(i) adopt rules necessary to administer and enforce the provisions of this part; and

(j) perform any other duties necessary to implement the provisions of this part.

(4) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(5) Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 748, L. 1991.

22-3-805. Discovery — reporting requirements — field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in 22-3-808.

(2) Upon discovery of human skeletal remains, a burial site, or burial material, excavation or further disturbance must cease until the coroner has determined whether the remains are subject to the provisions of Title 46, chapter 4, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death or whether a forensic examination of the human skeletal remains, burial site, or burial material is necessary. The coroner shall make his determination within 2 working days from the time the person responsible for the excavation notifies him of the discovery or recognition of the remains. If the coroner cannot make the determination within 2 working days, he shall notify a member of the board of the reason for and the approximate length of the delay. The coroner shall take all reasonable steps to make his determination without removing or causing further disturbance of the remains.

(3) If a forensic examination, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death is necessary and yields evidence of criminal activity, the evidence may be seized by the coroner or law enforcement agency with jurisdiction for use in a criminal proceeding as provided by law.

(4) If the coroner determines that the remains are not subject to the provisions of Title 46, chapter 4, or any other provisions of law concerning the investigation of the circumstances, manner, and cause of death and that a forensic examination is not necessary, he shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact either the landowner and the board or the landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

(6) Within 36 hours after the board receives notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner,

an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or his representative for a reasonable time extension to complete the review. The field review must include:

(a) a determination of whether the site can be preserved;

(b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and

(c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

(7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide, within 40 days after notification to the board, a resolution acceptable to the landowner and the board, the human skeletal remains and burial materials must be removed and control is vested in the board. The board shall give control of the remains or materials in the following priority to:

(a) the descendants, if identifiable;

(b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials;

(c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered if, upon notification by the board, the tribe or cultural group states a claim for the remains or materials; or

(d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials.

(8) For purposes of this section, "cultural group" means a present-day group or organization that has a relationship of shared group identity which can be reasonably traced historically or prehistorically to an identifiable earlier group or organization.

History: En. Sec. 5, Ch. 748, L. 1991.

Cross-References

Investigative procedures, Title 46, ch. 4.

22-3-806. Scientific analysis — permit required. (1) Although onsite reburial is preferred, the board may, upon petition by a person seeking permission to perform scientific analysis, grant a permit for the scientific removal and analysis of human skeletal remains and burial material upon proof and determination by the board that the analysis is scientifically justifiable. A petition for a permit must include:

(a) payment of the nonrefundable application fee provided for in 22-3-804; and

(b) a brief narrative describing the methodology to be used, the timeframe needed to complete the scientific study, and any other information specifically requested by the board relating to the proposed study.

(2) The methodology proposed must be reviewed by the state historic preservation officer or his designated representative and the physical anthropologist on the board, and a recommendation must be made to the full board. Once approved by the board, any change in methodology or in the timeframe must be approved by the board before the original timeframe

expires. The timeframe for scientific study may not exceed 12 months from the date of issuance of the permit.

(3) A permit for scientific analysis issued by the board is subject to terms, conditions, and procedures prescribed by the board and must include the condition that a permittee shall pay all costs of excavation, study, and disposition.

(4) The board shall either issue or deny a permit within 30 working days from the date of the permit petition. If the board denies a permit upon a finding that scientific analysis is not justifiable, the board shall provide the applicant with a written statement outlining the grounds for its finding. The applicant may appeal the decision of the board under the provisions of Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(5) The board may suspend or revoke a permit pursuant to the Montana Administrative Procedure Act upon a finding that the permittee has violated any provision of this part or any term, condition, or procedure of a permit issued by the board.

(6) The provisions of this section do not apply to a forensic examination by the county coroner, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death.

History: En. Sec. 6, Ch. 748, L. 1991.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

22-3-807. Nondisclosure of records. (1) The state historic preservation officer, in consultation with the board, shall maintain burial site records that are separate and distinct from those in the cultural resource registry and that are necessary to administer this part.

(2) Burial site records are confidential and available only to criminal justice agencies or to federal, state, and tribal personnel or their appointed representatives legally charged with administering laws protecting cultural resources.

(3) Statistical information compiled from burial site records must be made available to the general public. Any information concerning burial site records that is released to a criminal justice agency is confidential criminal justice information, as defined in 44-5-103, and is subject to dissemination pursuant to 44-5-303.

History: En. Sec. 7, Ch. 748, L. 1991.

Cross-References

Montana Criminal Justice Information Act of 1979, Title 44, ch. 5.

22-3-808. Prohibited acts — penalties. (1) After July 1, 1991, unless authorized under this part or by the descendants, tribe, cultural group, or other person, group, or entity to which the board gives control of the human skeletal remains or burial materials under 22-3-805, a person may not:

(a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked, unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;

(b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of this part; or

(c) purposely or knowingly disclose information knowing that it is highly probable that the disclosure will lead to pilferage, disturbance, or destruction of a burial site.

(2) A person convicted under the provisions of subsection (1)(a) may be fined an amount not to exceed $1,000, be imprisoned in the county jail for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(a) may be fined an amount not to exceed $20,000, be imprisoned for not more than 5 years, or both.

(3) A person convicted under the provisions of subsection (1)(b) may be fined an amount not to exceed $50,000, be imprisoned for not more than 20 years, or both.

(4) A person convicted under the provisions of subsection (1)(c) may be fined an amount not to exceed $500, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(c) may be fined an amount not to exceed $10,000, be imprisoned for not more than 5 years, or both.

(5) A person who knowingly fails to give notice as required by 22-3-805(1) may be fined an amount not less than $100 or more than $500.

(6) A person who violates a provision of this section or any term or condition of a permit issued under 22-3-806 is subject to a civil penalty not to exceed $2,000 for the first violation and not to exceed $10,000 for a subsequent violation.

History: En. Sec. 8, Ch. 748, L. 1991.

22-3-809. Civil penalty and damages actions. (1) This part does not preclude civil actions for damages.

(2) The board may bring an action under 22-3-808 for a civil penalty.

History: En. Sec. 9, Ch. 748, L. 1991.

22-3-810. Closure of board meetings. The board may close part of a meeting of the board to the public if the board finds that information that may be acquired at that part of the meeting may allow a person to identify a burial site, human skeletal remains, or burial material and pilfer, disturb, or destroy the human skeletal remains, burial site, or burial material.

History: En. Sec. 10, Ch. 748, L. 1991.

Cross-References

Right of public to examine documents or to observe deliberations of public bodies, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Criminal penalty for conducting closed meeting — official misconduct, 45-7-401.

22-3-811. Disposition of fees, grants, and donations. There is an account in the state special revenue fund. The board shall deposit any fee, grant, or donation received under 22-3-804 into the account to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

History: En. Sec. 13, Ch. 748, L. 1991.

TITLE 23

PARKS, RECREATION, SPORTS, AND GAMBLING

Ch.
1. Parks.
2. Recreation.
3. Athletics — Boxing and Wrestling.
4. Horseracing.
5. Gambling.
6. Amusement Games.
7. State Lottery.

CHAPTER 1

PARKS

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State jurisdiction in national parks, 2-1-205, 2-1-207.

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Governmental and public entities to take property by gift or devise, 7-8-103.

County Board of Park Commissioners, Title 7, ch. 16, part 23.

Municipal authority to establish, alter, and maintain parks, 7-16-4101.

Montana Forest and Conservation Experiment Station established, 20-25-241.

Smith River Management Act, Title 23, ch. 2, part 4.

Unlawful obstruction of use of public park — nuisance, 27-30-101.

Tourist campgrounds and trailer courts, Title 50, ch. 52.

Gasoline dealers' license tax — State Parks Account — Snowmobile Account, 60-3-201.

Acquisition of land adjoining or near highway for a park, 60-4-103.

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City, County, or City-County Planning Board — taking property by gift or devise, 76-1-408.

Dedication of portion of subdivision to public parks or playgrounds, 76-3-606.

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County park districts, Title 7, ch. 16, part 24.

23-1-101. Purpose. For the purpose of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state and providing for their use and enjoyment, thereby contributing to the cultural, recreational, and economic life of the people and their health, the department of fish, wildlife, and parks (hereinafter referred to as department) is hereby vested with the duties and powers hereinafter set forth.

History: En. Sec. 1, Ch. 48, L. 1939; amd. Sec. 1, Ch. 178, L. 1953; amd. Sec. 1, Ch. 69, L. 1965; amd. Sec. 1, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-301; amd. Sec. 2, Ch. 218, L. 1979.

23-1-102. Powers and duties of department of fish, wildlife, and parks. The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state and may by purchase, lease, agreement, acceptance of donations, or condemnation for the purposes outlined in 87-1-209(2) acquire for the state any areas, sites, or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The department may in its discretion accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may in its discretion accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part. A contract, for any of the purposes of this part, may not be entered into or other obligation incurred until moneys have been appropriated by the legislature or are otherwise available and, if the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or $100,000 in value, until the board of land commissioners has specifically approved such acquisition. The department also has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system. The department may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation it considers appropriate, remove or change the designation of any area or portion, and name or change the name of any area as designated. The department may lease those portions of designated lands which are necessary for the proper administration of these lands in keeping with the basic purpose of this part.

History: En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955; amd. Sec. 2, Ch. 69, L. 1965; amd. Sec. 1, Ch. 135, L. 1969; amd. Sec. 49, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-304; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 230, L. 1981; amd. Sec. 1, Ch. 418, L. 1981; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Disposal of coal severance tax for acquisition and maintenance of parks, 15-35-108.

Fish and Wildlife — Department of Fish, Wildlife, and Parks, Title 87, ch. 1, part 2.

23-1-103. Acceptance of title to recreational and camping grounds by board of land commissioners. The state board of land commissioners may acquire and accept title in the name of the state of Montana by grant, dedication, gift, devise, donation, or demise to land suitable for public camping and public recreational use. The state board of land commissioners is hereby authorized to set aside any suitable tract or tracts of state lands for such purpose. Each of the aforesaid tracts of land shall be set aside and used exclusively for public camping and other recreational purposes, and each park created under the provisions of this section shall be given an appropriate name by the state board of land commissioners.

History: En. Sec. 1, Ch. 111, L. 1929; re-en. Sec. 1842.1, R.C.M. 1935; R.C.M. 1947, 62-312.

Cross-References

Payment of estate or inheritance taxes by transfer to state of historical or recreational property, 76-16-445 through 76-16-450.

Organization and duties of Board of Land Commissioners, Title 77, ch. 1, part 2.

Acquisition of land or waters by Department of Fish, Wildlife, and Parks, 87-1-209.

23-1-104. Connecting roads. The department of transportation may construct, improve, and maintain, with state highway funds, connecting roads between existing state highways and state parks. Each road shall not exceed a total length of 10 miles.

History: En. Sec. 7, Ch. 48, L. 1939; amd. Sec. 2, Ch. 178, L. 1953; amd. Sec. 3, Ch. 69, L. 1965; amd. Sec. 50, Ch. 511, L. 1973; R.C.M. 1947, 62-307; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Construction of highways by Department of Transportation, 60-2-201.

23-1-105. Fees and charges. (1) The department shall have power to levy and collect reasonable fees or other charges for the use of privileges and conveniences as may be provided and to grant concessions as it considers advisable, except as provided in subsection (2). All money derived from the activities of the department must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana as defined in 87-2-102 and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is not subject to the deposit requirements of 17-6-105. The department shall deposit money collected under this section within a reasonable time after receipt.

History: En. Sec. 5, Ch. 48, L. 1939; amd. Sec. 26, Ch. 147, L. 1963; amd. Sec. 1, Ch. 87, L. 1967; amd. Sec. 1, Ch. 415, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-305; amd. Sec. 1, Ch. 188, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 304, L. 1985; amd. Sec. 1, Ch. 368, L. 1989; amd. Sec. 2, Ch. 339, L. 1991; amd. Sec. 4, Ch. 662, L. 1991.

Cross-References

Deposit of part of gasoline dealers' license tax in state park account, 60-3-201.

23-1-106. Rules — penalties — enforcement. (1) The department may make rules governing the use, occupancy, and protection of the lands and property under its control.

(2) Any person who injures or damages any land or property under control of the department or private property thereon or therein or violates any of the rules made by the department relating to these areas is guilty of a misdemeanor and shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months.

(3) It is unlawful and a misdemeanor punishable as provided in subsection (2) to refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and game warden, park ranger, or peace officer.

(4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The director of the department shall employ all necessary and qualified personnel for enforcement purposes.

(5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this chapter and rules of the department and the fish, wildlife, and parks commission; and

(c) to report violations to the county attorney of the county in which they occur.

History: (1)En. Sec. 6, Ch. 48, L. 1939; amd. Sec. 2, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 62-306, R.C.M. 1947; (2)En. Sec. 3, Ch. 111, L. 1929; re-en. Sec. 1842.3, R.C.M. 1935; amd. Sec. 5, Ch. 178, L. 1953; amd. Sec. 6, Ch. 69, L. 1965; amd. Sec. 5, Ch. 2,

L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 62-314, R.C.M. 1947; R.C.M. 1947, 62-306, 62-314; amd. Sec. 2, Ch. 662, L. 1991.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

Fish and Wildlife Crimestoppers Act, Title 87, ch. 5, part 6.

23-1-107. Cooperation. In carrying out the provisions of this part, the department may seek and accept the cooperation of other state and local agencies and the agencies of the federal government and may assist and cooperate with other state agencies, political subdivisions of the state, with neighboring states, and with the federal government in matters relating to acquiring, planning, establishing, developing, improving, or maintaining any park, parkway, recreational area, monument, historic site, or archaeological site.

History: En. Sec. 8, Ch. 48, L. 1939; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-308.

23-1-108. Acquisition of certain state parks, monuments, or historical sites. (1) Any person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department of fish, wildlife, and parks by July 1 of the year preceding the convening of a legislative session.

(2) The fish, wildlife, and parks commission shall present to the legislature by the 15th day of any legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state recreational areas, state monuments, or state historical sites with the money contained in the parks account.

(3) The legislature must appropriate funds from this account before any park, area, monument, or site may be purchased.

History: En. Sec. 3, Ch. 653, L. 1979; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 637, L. 1985; amd. Sec. 2, Ch. 28, L. 1991.

Cross-References

Disposal of severance taxes for acquisition and maintenance of parks, 15-35-108.

Payment of estate or inheritance taxes by transfer to state of historical or recreational property, 76-16-445 through 76-16-450.

Acquisition of land or waters by Department of Fish, Wildlife, and Parks, 87-1-209.

23-1-109. Establishment of Montana agricultural center and museum of the Northern Great Plains. There is a Montana agricultural center and museum of the Northern Great Plains located in Fort Benton. The department of fish, wildlife, and parks shall have jurisdiction, custody, and control of the center and museum, but shall lease the facility to the city of Fort Benton for so long as the city of Fort Benton provides for development, operation, and maintenance of the center and museum without cost to the state of Montana.

History: En. Sec. 1, Ch. 255, L. 1987.

23-1-110. Improvement or development of state park or fishing access site — required public involvement — rules. (1) The fish, wildlife, and parks commission shall adopt rules establishing a policy whereby any proposed improvement or development of a state park or fishing access site that significantly changes park or fishing access site features or use patterns is subject to notice of proposed modifications, both statewide and locally, and to opportunity for a public meeting and public comment on the advisability and acceptability of the proposal.

(2) The department shall prepare a public report regarding any project that is subject to the provisions of subsection (1). The report must include conclusions relating to the following aspects of the proposal:

(a) the desires of the public as expressed to the department;

(b) the capacity of the park or fishing access site for development;

(c) environmental impacts associated with the improvement or development;

(d) the long-range maintenance of the improvements;

(e) the protection of natural, cultural, and historical park or fishing access site features;

(f) potential impacts on tourism; and

(g) site-specific modifications as they relate to the park or fishing access site system as a whole.

History: En. Sec. 1, Ch. 367, L. 1991; amd. Sec. 2, Ch. 28, L. 1991.

23-1-111 through 23-1-114 reserved.

23-1-115. Short title. Sections 23-1-115 through 23-1-118 may be cited as the "Montana Primitive Parks Act".

History: En. Sec. 1, Ch. 501, L. 1993.

23-1-116. Primitive parks established. Because of their unique and primarily undeveloped character, the following state parks and management areas are designated as primitive parks and are subject to the provisions of 23-1-115 through 23-1-118:

(1) Lambeth (Lake Mary Ronan) state park;

(2) Thompson Falls state park;

(3) Wild Horse Island state park;

(4) Lost Creek state park;

(5) Painted Rocks state park;

(6) Ackley Lake state park;

(7) sluice boxes state park;

(8) Deadman's basin state park;

(9) Pirogue Island state park;

(10) Medicine Rocks state park;

(11) Headwaters state park;

(12) Council Grove state park;

(13) Beaverhead Rock state park;

(14) Natural Bridge state park; and

(15) Madison Buffalo Jump state park.

History: En. Sec. 2, Ch. 501, L. 1993.

23-1-117. Limit on development of primitive parks. (1) As of October 1, 1993, the only development allowed in primitive parks designated in 23-1-116 is:

(a) necessary improvements required to meet minimum public health standards regarding sanitation, which may include necessary access to outhouses, vaults, and water;

(b) improvements necessary to ensure the safe public use of existing boat ramps;

(c) addition of gravel to existing unpaved roads and the resurfacing of paved roads when necessary to ensure safe public access;

(d) establishment of new hiking trails or improvement of existing hiking trails; and

(e) installation of minimal signage indicating that the park is a designated primitive park in which development has been limited and encouraging the public to help in maintaining the park's primitive character by packing out trash.

(2) The following development of designated primitive parks is prohibited:

(a) installation of electric lines or facilities, except when necessary to comply with subsection (1)(a);

(b) installation of recreational vehicle sanitary dumpsites where they do not presently exist; and

(c) creation of new roads and paving of existing but previously unpaved roads.

History: En. Sec. 3, Ch. 501, L. 1993.

23-1-118. Elimination of resident user fee — fee for nonresident use — penalty. (1) In recognition of the right of Montana residents to use primitive parks without regard to their ability to pay, a Montana resident is not required to pay a user fee for the use of any primitive park designated in 23-1-116, except that the department may charge camping fees at Thompson Falls state park and Headwaters state park.

(2) A nonresident who wishes to use a primitive park is required to pay the state park user fees chargeable under 23-1-105.

History: En. Sec. 4, Ch. 501, L. 1993.

23-1-119 and 23-1-120 reserved.

23-1-121. Park rangers — qualifications — powers and duties. (1) The department is authorized to establish a corps of park rangers and to select and appoint park rangers who must be qualified by their experience, training, skill, and interest in the protection, conservation, and stewardship of the natural and cultural resources and parks administered by the department.

(2) Park rangers shall enforce the laws of this state and the rules of the department and the fish, wildlife, and parks commission that provide for the protection, conservation, and stewardship of the natural and cultural resources in the state parks system.

(3) Park rangers shall protect campers, picnickers, and other park users; keep the peace; supervise public use; and maintain public order in all units of the state parks system.

(4) Park rangers shall perform all other duties prescribed by the department.

History: En. Sec. 1, Ch. 662, L. 1991.

23-1-122. Enforcement powers of park rangers and game wardens. (1) Park rangers appointed pursuant to 23-1-121 and fish and game wardens appointed pursuant to 87-1-501 are authorized officers with the authority to enforce the laws and adopted rules relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7.

(2) An authorized officer may:

(a) arrest, in accordance with Title 46, chapter 6, any person within an area managed by the department upon probable cause to believe that the person has committed an offense against chapters 1 and 2 of this title, except chapter 2, part 7, or rules of the department or the fish, wildlife, and parks commission;

(b) enforce the disorderly conduct and public nuisance laws under 45-8-101 and 45-8-111 as they apply to the operation of motorboats on waters within areas managed by the department under this part; and

(c) exercise other powers of peace officers in the enforcement of:

(i) laws relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7;

(ii) rules of the department and the fish, wildlife, and parks commission; and

(iii) judgments obtained for violations of the laws and rules specified in this subsection (2)(c).

History: En. Sec. 3, Ch. 662, L. 1991.

23-1-123 through 23-1-130 reserved.

23-1-131. Distribution of lodging facility use tax revenue to department of fish, wildlife, and parks to maintain parks. (1) In each year of the biennium, the amount specified in 15-65-121(1)(c) must be transferred to an account in the state special revenue fund to the credit of the department of fish, wildlife, and parks in quarterly installments.

(2) The department shall use the funds provided under 15-65-121(1)(c) for the maintenance of state parks that have both resident and nonresident tourist usage. The department shall by July 1 of each year report to the tourism advisory council on the identity and status of all contracts or activities funded pursuant to this section.

History: En. Secs. 2, 3, Ch. 574, L. 1993.

Compiler's Comments

Effective Date: Section 6, Ch. 574, L. 1993, provided that this section is effective July 1, 1993.

Part 2

State Scientific and Recreational Park

23-1-201. Establishment of state scientific and recreational park. In order to preserve and protect the biological station grounds hereafter referred to and to remove fire hazards and the danger of other encroachments tending to detract from the scientific values and uses thereof, the department is authorized to maintain a state scientific and recreational park on a suitable area to be designated by it not exceeding 15 acres at the southeast portion of the lands granted by the United States of America to the state of Montana for the use of the university of Montana for biological station purposes.

History: En. Sec. 1, Ch. 108, L. 1941; amd. Sec. 3, Ch. 178, L. 1953; amd. Sec. 4, Ch. 69, L. 1965; amd. Sec. 3, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-310.

Cross-References

Certain public lands held in trust, Art. X, sec. 11, Mont. Const.

23-1-202. Rules governing use. The department shall make such rules governing the park's use, occupancy, and the protection of the remaining lands of the grant as necessary to promote and continue the use of all of the lands for biological station purposes. The park itself shall be so maintained as to develop and encourage public interest in the scientific and biological resources of the area. Nothing herein contained prevents the use of the area within the park for biological station purposes whenever it becomes useful or necessary for such purposes.

History: En. Sec. 2, Ch. 108, L. 1941; amd. Sec. 4, Ch. 178, L. 1953; amd. Sec. 5, Ch. 69, L. 1965; amd. Sec. 4, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-311.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

Part 3

Montana Conservation Corps

23-1-301. Montana conservation corps — purpose and intent. (1) There is a Montana conservation corps within the parks division of the department of fish, wildlife, and parks. The corps is part of the Montana community service corps provided for under Title 90, chapter 14, part 1, and is subject to the oversight of the office of community service.

(2) The purpose of the corps is to accomplish labor-intensive improvements to the state park system and to other public lands and to perform community service activities for which specific responsibilities are accepted through service contracts.

(3) It is the intent of the legislature that the corps grow in productive ways and that state agencies involved with the corps provide coordination of the conservation corps program and the programs established under Title 90, chapter 14, part 1. The legislature also intends that the Montana conservation corps program have the authority to contract with the job service or the human resource development council, as defined in 53-10-501.

History: En. Sec. 1, Ch. 556, L. 1989; amd. Sec. 10, Ch. 534, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 534 in (1) inserted second sentence regarding Montana Community Service Corps; in (2), after "lands", inserted "and to perform community service activities"; and in (3), at end of first sentence, inserted "and the programs established under Title 90, chapter 14, part 1" and in last sentence, after "program", inserted "have the authority to". Amendment effective April 24, 1993.

23-1-302. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Corps" means the Montana conservation corps.

(2) "Corps coordinator" means the person who acts as the corps administrative officer and employs the staff necessary to implement the provisions of this chapter.

(3) "Corpsmember" means a participant in the corps.

(4) "Crewleader" means a participant in the corps who supervises corpsmembers.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Division" means the parks division of the department of fish, wildlife, and parks.

(7) "State agencies" means the departments of fish, wildlife, and parks; social and rehabilitation services; labor and industry; state lands; family services; and natural resources and conservation.

History: **En. Sec. 2, Ch. 556, L. 1989.**

23-1-303. Powers and duties of the division. The division, in cooperation with the department, may:

(1) hire a corps coordinator;

(2) coordinate with state agencies to place eligible participants in work experience projects, including those state general assistance (GA) and federal aid to families with dependent children (AFDC) recipients utilizing grant diversion funding and youth under state supervision utilizing payments from the department of family services;

(3) develop and approve work experience projects that meet the requirements of this part;

(4) ensure that work experience projects involve labor-intensive improvements to public lands or facilities that will result in a public value and have a potential to yield revenue;

(5) execute contracts or cooperative agreements containing the terms and conditions necessary and desirable for the employment of crewleaders and corpsmembers in approved work experience projects with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations;

(6) execute contracts or cooperative agreements with federal, state, or local agencies, persons, partnerships, associations, or corporations for the purpose of administering the requirements of this part;

(7) develop procedures for awarding incentive vouchers;

(8) authorize use of the corps for emergency projects, including but not limited to natural disasters, fire prevention and suppression, and rescue of lost or injured persons, and provide adequate training to corpsmembers prior to participation in an emergency project;

(9) apply for and accept grants or contributions of services, funds, or lands from any public or private donors, including the acceptance of federal funds appropriated by the legislature;

(10) purchase, rent, acquire, or obtain personal property, supplies, instruments, tools, or equipment necessary to complete work experience projects; and

(11) adopt rules and guidelines necessary to implement the provisions of this part and to effectively administer the program.

History: **En. Sec. 3, Ch. 556, L. 1989.**

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

23-1-304 through 23-1-310 reserved.

23-1-311. Work experience projects — criteria — standards — land use exceptions. (1) The division shall ensure that each work experience project established pursuant to the authority granted in 23-1-303 provides corpsmembers with job training skills, which may include job search and application skills, and with work experience related to the conservation, improvement, or development of natural resources or the enhancement, preservation, or maintenance of public lands, waters, or facilities. Job training may be provided by the work experience project or by other agencies as provided in 23-1-303.

(2) Work experience projects must be selected according to criteria that include but are not limited to:

(a) the extent to which the project will provide environmental, natural resource, and state park system benefits;

(b) the extent to which the project will provide opportunities for public use and value of the land or facility and on-the-job training for corpsmembers; and

(c) the extent to which the project will generate additional revenue for the state or its subdivisions.

(3) Work sites of work experience projects must conform to applicable health and safety standards required for safe work environments.

(4) Work experience projects developed or approved and funded by the division must be limited to public lands and facilities except where improvements to other lands will provide documented public value or benefit. Reimbursement must be provided to the division for that portion of the total cost of work on nonpublic lands. The reimbursement must be retained by the division for use in the corps program or for incentive vouchers. In the case of emergencies and natural disasters, projects may take place on land or at facilities not owned by the department or by another state or local agency without regard to public benefit and private reimbursement.

History: En. Sec. 4, Ch. 556, L. 1989.

23-1-312. Eligibility for employment in program — referrals. (1) To be eligible to participate in the Montana conservation corps program, a person must:

(a) be a citizen of the state as defined in 1-1-402;

(b) be 18 years of age or older to qualify for the adult corps and at least 16 years of age and under 22 years of age to qualify for the summer youth corps;

(c) be capable of performing labor-intensive work; and

(d) meet the requirement of the job service and the human resource development council, as defined in 53-10-501, for participation in job training programs, be assigned by the department of family services as a youth under state supervision, be unemployed, or be accepted as an unpaid volunteer.

(2) Eligibility for corpsmembers must be determined by local job service offices and summer youth program operators. If the number of corps positions is insufficient to place all eligible individuals who apply for participation in the program, the job service may, upon approval by the applicant, provide the name of an eligible individual to private sector employers or to job training programs requesting referrals.

History: En. Sec. 5, Ch. 556, L. 1989.

23-1-313. Term of enrollment — compensation — exemption from employee benefits. (1) A corpsmember will be placed for a period not to exceed 12 months. The program operator shall refer the names of corpsmembers who successfully complete their participation in the corps to the job service for assistance in securing private sector employment or for enrollment in additional job training programs. The program operator may also, upon approval of the corpsmember, provide the name of a corpsmember who successfully completes his participation in the corps to private sector employers requesting referrals.

(2) A corpsmember may not be scheduled to work for more than 40 hours per week. Job training and placement services must be provided to corpsmembers during regular work hours. Corpsmembers must be compensated as provided in subsection (3) for participation in job training and placement service programs.

(3) A corpsmember must be compensated at a rate set by the department that is not less than the federal minimum wage.

(4) A corpsmember is not entitled to any employee benefits provided to permanent department or agency employees except for holiday pay and workers' compensation benefits that are provided through the funds appropriated to carry out this part. Service as a corpsmember does not qualify an individual for unemployment compensation benefits.

(5) If funds are available, a person who is employed as a corpsmember for the full period of enrollment and who receives a satisfactory employment evaluation may be awarded an incentive voucher valid for up to 3 years at any Montana institution of higher education or vocational-technical center.

History: En. Sec. 6, Ch. 556, L. 1989.

23-1-314. Prohibited activities. (1) The division, in developing and approving work experience projects, shall ensure that:

(a) work available to participants is not available as the result of a labor dispute, strike, or lockout and will not be assigned to cause a layoff or downgrading or to prevent the return to work of an available competent employee; and

(b) a work experience project:

(i) does not impair existing contracts for service or collective bargaining agreements; and

(ii) is not inconsistent with the terms of a collective bargaining agreement without written concurrence of the labor organization and employer concerned.

(2) It is unlawful for a person to demand from any public officer, corpsmember, or crewleader an assessment or percentage of any money or profit, or its equivalent in support, service, or any other thing of value, with the express or implied understanding that it will be used for political purposes. Nothing contained in this part may be construed to prohibit voluntary contributions to any political committee or organization for legitimate political purposes to the extent allowed by law.

History: En. Sec. 7, Ch. 556, L. 1989.

CHAPTER 2

RECREATION

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Part 1

Development of Outdoor Recreational Resources

23-2-101. Legislative findings — purpose. Montana is uniquely endowed with scenic landscapes and areas rich in recreational value. This outdoor heritage enriches the lives of citizens, attracts new residents and businesses to the state, and is of major significance to the expanding tourist industry. It is the purpose of this part to give authority to the department of fish, wildlife, and parks to plan and develop outdoor recreational resources in the state, which authority shall permit receiving and expending funds including federal grants for this purpose.

History: En. Sec. 1, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-401; amd. Sec. 2, Ch. 218, L. 1979.

23-2-102. Department of fish, wildlife, and parks to implement federal act. The department of fish, wildlife, and parks is hereby designated as the state agency to represent and act for the state for the purpose of implementing the Land and Water Conservation Fund Act of 1965.

History: En. Sec. 2, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-402; amd. Sec. 2, Ch. 218, L. 1979.

23-2-103. Compliance with federal act authorized — powers of department. The department of fish, wildlife, and parks shall do those things necessary to comply with the provisions of the Land and Water Conservation Fund Act of 1965. Among other things, the department of fish, wildlife, and parks may:

(1) prepare a comprehensive statewide outdoor recreational plan which shall contain an evaluation of the demand for and supply of outdoor recreational resources and facilities in Montana and a program for implementation of the plan;

(2) accept and administer moneys paid by the secretary of the interior for approved projects;

(3) contract with other state agencies, cities, counties, and other political subdivisions of the state, private organizations, and agencies of the federal government;

(4) acquire, other than by eminent domain, and develop outdoor recreational areas and facilities and land and waters and interests in land and waters for such areas and facilities;

(5) for the purpose of implementing the Land and Water Conservation Fund Act of 1965, coordinate its activities with and represent the interests of all agencies of state, city, county, and other governmental units with outdoor recreational responsibilities.

History: En. Sec. 3, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-403; amd. Sec. 2, Ch. 218, L. 1979.

Part 2 reserved

Part 3
Recreational Use of Streams

Part Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Smith River Management Act, Title 23, ch. 2, part 4.

Owner of land bounded by water, 70-16-201.

Limitation of landowner's liability to recreationists, Title 70, ch. 16, part 3.

Title by prescription, 70-19-405.

Aquatic ecosystem protections, Title 75, ch. 7.

Public ways, 85-1-111.

Navigable waters, 85-1-112.

Surface water and ground water, Title 85, ch. 2.

Fish and Wildlife, Title 87.

Navigable waters subject to fishing rights, 87-2-305.

23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, which totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other manmade obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than lakes, that:

(a) lie within the officially recorded federal government survey meander lines thereof;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a manmade water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark.

History: En. Sec. 1, Ch. 429, L. 1985, and Sec. 1, Ch. 556, L. 1985; amd. Sec. 2, Ch. 28, L. 1991.

Cross-References

"Recreational purposes" defined, 70-16-301.

Floodplain and floodway management, Title 76, ch. 5.

23-2-302. Recreational use permitted — limitations — exceptions. (1) Except as provided in subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters.

(2) The right of the public to make recreational use of surface waters does not include, without permission or contractual arrangement with the landowner:

(a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation upon the water;

(b) the recreational use of surface waters in a stock pond or other private impoundment fed by an intermittently flowing natural watercourse;

(c) the recreational use of waters while diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access;

(d) big game hunting except by long bow or shotgun when specifically authorized by the commission;

(e) overnight camping within sight of any occupied dwelling or within 500 yards of any occupied dwelling, whichever is less;

(f) the placement or creation of any permanent duck blind, boat moorage, or any seasonal or other objects within sight of or within 500 yards of an occupied dwelling, whichever is less; or

(g) use of a streambed as a right-of-way for any purpose when water is not flowing therein.

(3) The right of the public to make recreational use of class II waters does not include, without permission of the landowner:

(a) big game hunting;

(b) overnight camping;

(c) the placement or creation of any seasonal object; or

(d) other activities which are not primarily water-related pleasure activities as defined in 23-2-301(10).

(4) The right of the public to make recreational use of surface waters does not grant any easement or right to the public to enter onto or cross private property in order to use such waters for recreational purposes.

(5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. These rules must include the following:

(a) the establishment of procedures by which any person may request an order from the commission:

(i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water; or

(ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission;

(b) provisions requiring the issuance of written findings and a decision whenever a request is made pursuant to the rules adopted under subsection (5)(a); and

(c) a procedure for the identification of streams within class II waters which are not capable of recreational use or are capable of limited recreational use, and a procedure to restrict the recreational use to the actual capacity of the water.

(6) The provisions of this section do not affect any rights of the public with respect to state-owned lands that are school trust lands or any rights of lessees of such lands.

History: En. Sec. 1, Ch. 429, L. 1985, and Sec. 2, Ch. 556, L. 1985.

Cross-References

Regulation of snowmobiles, Title 23, ch. 2, part 6.

Definition of "enter or remain unlawfully", 45-6-201.

Waterfowl hunting stamp, 87-2-411.

Hunting licenses, Title 87, ch. 2, part 5.

23-2-303 through 23-2-308 reserved.

23-2-309. Land title unaffected. The provisions of this part and the recreational uses permitted by 23-2-302 do not affect the title or ownership of the surface waters, the beds, and the banks of any navigable or nonnavigable waters or the portage routes within this state.

History: En. Sec. 7, Ch. 556, L. 1985.

Cross-References

Ownership of streambed, 70-16-201.

Formation of islands and banks by streams, Title 70, ch. 18, part 2.

23-2-310. Lakes. Nothing contained in this part addresses the recreational use of surface waters of lakes.

History: En. Sec. 8, Ch. 556, L. 1985.

23-2-311. Right to portage — establishment of portage route. (1) A member of the public making recreational use of surface waters may, above the ordinary high-water mark, portage around barriers in the least intrusive manner possible, avoiding damage to the landowner's land and violation of his rights.

(2) A landowner may create barriers across streams for purposes of land or water management or to establish land ownership as otherwise provided by law. If a landowner erects a structure which does not interfere with the public's use of the surface waters, the public may not go above the ordinary high-water mark to portage around the structure.

(3) (a) A portage route around or over a barrier may be established to avoid damage to the landowner's land and violation of his rights, as well as to provide a reasonable and safe route for the recreational user of the surface waters.

(b) A portage route may be established when either a landowner or a member of the recreating public submits a request to the supervisors that such a route be established.

(c) Within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner and a representative of the department, examine and investigate the barrier and the adjoining land to determine a reasonable and safe portage route.

(d) Within 45 days of the examination of the site, the supervisors shall make a written finding of the most appropriate portage route.

(e) The cost of establishing the portage route around artificial barriers must be borne by the involved landowner, except for the construction of notification signs of such route, which is the responsibility of the department. The cost of establishing a portage route around artificial barriers not owned by the landowner on whose land the portage route will be placed must be borne by the department.

(f) Once the route is established, the department has the exclusive responsibility thereafter to maintain the portage route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the existence of the portage route and the public's obligation to use it as the exclusive means around a barrier.

(g) If either the landowner or recreationist disagrees with the route described in subsection (3)(e), he may petition the district court to name a three-member arbitration panel. The panel must consist of an affected landowner, a member of an affected recreational group, and a member selected by the two other members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding under subsection (3)(d).

(h) The determination of the arbitration panel is binding upon the landowner and upon all parties that use the water for which the portage is provided. Costs of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

(i) The determination of the arbitration panel may be appealed within 30 days to the district court.

(j) Once a portage route is established, the public shall use the portage route as the exclusive means to portage around or over the barrier.

(4) Nothing contained in this part addresses the issue of natural barriers or portage around said barriers, and nothing contained in this part makes such portage lawful or unlawful.

History: En. Sec. 3, Ch. 556, L. 1985.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

Owner of land bounded by water, 70-16-201.

Public ways, 85-1-111.

Navigable waters, 85-1-112.

23-2-312 through 23-2-320 reserved.

23-2-321. Restriction on liability of landowner and supervisor. (1) A person who makes recreational use of surface waters flowing over or through land in the possession or under the control of another, pursuant to 23-2-302, or land while portaging around or over barriers or while portaging or using portage routes, pursuant to 23-2-311, is owed no duty by a landowner, his agent, or his tenant other than that provided in subsection (2).

(2) A landowner, his agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.

(3) No supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is liable to any person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct.

History: En. Sec. 4, Ch. 556, L. 1985; amd. Sec. 1, Ch. 209, L. 1987.

Cross-References

Liability, Title 27, ch. 1, part 7.

Limitation of landowner liability to recreationists, Title 70, ch. 16, part 3.

23-2-322. Prescriptive easement not acquired by recreational use of surface waters. (1) A prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years.

(2) A prescriptive easement cannot be acquired through:

(a) recreational use of surface waters, including:

(i) the streambeds underlying them;

(ii) the banks up to the ordinary high-water mark; or

(iii) any portage over and around barriers; or

(b) the entering or crossing of private property to reach surface waters.

History: En. Sec. 5, Ch. 556, L. 1985.

Cross-References

Title by prescription, 70-19-405.

Part 4

Management of Smith River

Part Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Stream access, Title 23, ch. 2, part 3.

Gratuitous permittee for recreation, Title 70, ch. 16, part 3.

Aquatic ecosystem protections, Title 75, ch. 7.

Surface water and ground water, Title 85, ch. 2.

Stream protection, Title 87, ch. 5, part 5.

23-2-401. Short title. This part may be cited as the "Smith River Management Act".

History: En. Sec. 1, Ch. 512, L. 1989.

23-2-402. Purpose — intent. (1) The purpose of this part is to:

(a) provide continued recreational and commercial use and enjoyment of the Smith River waterway, consistent with the river's capacity;

(b) seek ways to minimize conflicts between river users and private landowners; and

(c) protect the integrity of the river's water and canyon resources for future generations.

(2) The intent of this part is to interpret and implement this part in a manner consistent with the statement of purpose for the state park system in 23-1-101.

(3) Nothing in this part may be construed in any way to restrict a landowner's access to or use of his land, improvements, water rights, or adjacent waterways.

History: En. Sec. 2, Ch. 512, L. 1989.

23-2-403. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(2) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

History: En. Sec. 3, Ch. 512, L. 1989; amd. Sec. 2, Ch. 28, L. 1991.

23-2-404. Applicability. This part applies to that portion of the Smith River waterway located in Meagher and Cascade Counties lying between the Camp Baker state fishing access site in Meagher County and the confluence of the Smith River with the Missouri River. This description does not prevent the department from naming or renaming areas pursuant to 23-1-102.

History: En. Sec. 4, Ch. 512, L. 1989.

23-2-405 and 23-2-406 reserved.

23-2-407. Management responsibility and plan. The department has the primary recreational management responsibility for the Smith River waterway described in 23-2-404, consistent with the purpose stated in 23-1-101 and 23-2-402. The Smith River waterway must be administered to:

(1) allow the continuation of compatible existing recreational and public land uses;

(2) maintain the opportunity to enjoy the natural scenic beauty and solitude; and

(3) conserve fish and wildlife and scientific and recreational values.

History: En. Sec. 5, Ch. 512, L. 1989.

23-2-408. Rulemaking authority. The commission has authority to provide for the administration of the Smith River waterway. The commission may adopt rules to:

(1) regulate and allocate recreational and commercial floating and camping to preserve the biological and social benefits of recreational and commercial use of the Smith River waterway in its natural state. Recreational use may be restricted to preserve the experience of floating, fishing, and camping in a natural environment and to protect the river's fish, wildlife, water, and canyon resources. The restrictions must:

(a) consider the tolerance of adjacent landowners to recreational use;

(b) consider the capability of the river and adjoining lands to accommodate floating and camping use; and

(c) ensure an acceptable level of user satisfaction, including minimizing user conflicts and providing for a level of solitude.

(2) restrict recreational use, if necessary, through the implementation of a permit system. An allocation of a portion of the permits may be made to licensed outfitters to preserve the availability of outfitting services to the public.

(3) regulate the activities of recreational and commercial users of the water and land in the Smith River waterway that are legally accessible to the public and regulate the land in the river corridor that is under the control of the department and commission:

(a) for the purposes of safety, health, and protection of property;

(b) to preserve the experience of floating, fishing, and camping in a natural environment;

(c) to protect the river's fish, wildlife, water, and canyon resources; and

(d) to minimize conflicts between recreationists and private landowners; and

(4) establish recreational and commercial user fees for floating and camping on the Smith River waterway.

History: En. Sec. 6, Ch. 512, L. 1989.

23-2-409. Allocation of user fees. All money collected as recreational and commercial user fees for floating and camping on the Smith River waterway pursuant to 23-2-408 must be deposited in the state treasury in a state revenue fund to the credit of the department.

History: En. Sec. 7, Ch. 512, L. 1989.

23-2-410. Penalty — enforcement. (1) A person who violates a rule of the commission adopted pursuant to this part is guilty of a misdemeanor punishable by a fine of not less than $50 or more than $500, by imprisonment in a county jail for not more than 6 months, or by both fine and imprisonment.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department and the commission; and

(c) to report violations to the county attorney of the county in which they occur.

History: En. Sec. 8, Ch. 512, L. 1989; amd. Sec. 5, Ch. 662, L. 1991.

Part 5

Boats

23-2-501. Declaration of policy. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

History: En. Sec. 1, Ch. 285, L. 1959; R.C.M. 1947, 69-3501.

23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning such motorboat an identifying number and containing such information as required.

(2) "Certificate of ownership" means a certificate issued by the department of justice identifying the owner of a motorboat or sailboat 12 feet in length or longer.

(3) "Dealer" means any person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

(6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(7) "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.

(8) "Lienholder" means a person holding a security interest.

(9) "Manufacturer" means any person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(10) "Motorboat" means any vessel, including a canoe, kayak, personal watercraft, rubber raft, or pontoon, propelled by any machinery, motor, or engine of any description, whether or not such machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines but does not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(11) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or perfor-

mance of an obligation, but the term excludes a lessee under a lease not intended as security.

(14) "Passenger" means every person carried on board a vessel other than:

(a) the owner or his representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(15) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(16) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(17) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(18) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(19) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(20) "Waters of this state" means any waters within the territorial limits of this state.

History: En. Sec. 2, Ch. 285, L. 1959; amd. Sec. 1, Ch. 230, L. 1963; amd. Sec. 44, Ch. 391, L. 1973; amd. Sec. 1, Ch. 514, L. 1973; amd. Sec. 5, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3502; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 4, Ch. 433, L. 1987; amd. Sec. 32, Ch. 83, L. 1989; amd. Sec. 1, Ch. 577, L. 1989; amd. Sec. 1, Ch. 728, L. 1991.

23-2-503. Boat liveries. (1) The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is permitted by him to be operated, the identification number of such vessel, the departure date and time, and the expected time of return. The record shall be preserved for at least 6 months.

(2) Neither the owner of a boat livery nor his agent or employee shall permit any motorboat or any vessel permitted by him to be operated as a motorboat or vessel to depart from his premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to 23-2-521 and any rules made pursuant thereto.

History: En. Sec. 7, Ch. 285, L. 1959; amd. Sec. 9, Ch. 124, L. 1977; R.C.M. 1947, 69-3507.

23-2-504. Filing of rules. A copy of the rules adopted pursuant to this part and of any amendments thereto shall be filed in the office of the department and in the office of the secretary of state. Rules shall be published by the department in a convenient form and made easily available to all vessel operators.

History: En. Sec. 16, Ch. 285, L. 1959; amd. Sec. 15, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3516.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

23-2-505. Owner's civil liability. The owner of a vessel shall be liable for any injury or damage occasioned by the negligent operation of such vessel, whether such negligence consists of a violation of the provisions of the statutes of this state or neglecting to observe such ordinary care and such operation as the rules of the common law require. The owner shall not be liable, however, unless such vessel is being used with his or her express or implied consent. It shall be presumed that such vessel is being operated with the knowledge and consent of the owner if, at the time of the injury or damage, it is under the control of his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family. Nothing contained herein shall be construed to relieve any other person from any liability which he would otherwise have, but nothing contained herein shall be construed to authorize or permit any recovery in excess of injury or damage actually incurred.

History: En. Sec. 15, Ch. 285, L. 1959; R.C.M. 1947, 69-3515.

Cross-References

Liability for negligence and intentional torts, Title 27, ch. 1, part 7.

23-2-506. Enforcement. (1) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department and the fish, wildlife, and parks commission; and

(c) to report violations to the county attorney of the county in which they occur.

(2) All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of this part, as amended.

History: En. Sec. 17, Ch. 285, L. 1959; amd. Sec. 2, Ch. 336, L. 1969; amd. Sec. 14, Ch. 514, L. 1973; amd. Sec. 17, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3517; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 6, Ch. 662, L. 1991.

23-2-507. Penalty. (1) Violations of any section of this part, except 23-2-526(3), unless otherwise specified shall be a misdemeanor and be punishable by fine of not less than $15 or more than $500 or by imprisonment up to 6 months or by both such fine and imprisonment. All fine and bond forfeitures, except those paid to a justice's court, shall be transmitted to the state treasurer, who shall deposit such fines and forfeitures in the motorboat account of a special revenue fund. The moneys shall be used only by the department for enforcement of this part, as amended.

(2) If 23-2-525(4) is violated, 46-18-241 through 46-18-249 apply, except that the sentencing court shall order restitution and shall do so regardless of the court's disposition of the violator.

History: En. Sec. 18, Ch. 285, L. 1959; amd. Sec. 15, Ch. 514, L. 1973; amd. Sec. 18, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3518; amd. Sec. 17, Ch. 557, L. 1987; amd. Sec. 2, Ch. 44, L. 1989; amd. Sec. 33, Ch. 83, L. 1989.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Fish and Wildlife Crimestoppers Act, Title 87, ch. 5, part 6.

23-2-508. Certificate of ownership — filing of security interests. (1) Except as provided in subsection (9), a motorboat or sailboat 12 feet in length or longer may not be operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:

(a) name of the owner;
(b) residence of the owner, by town or county;
(c) business or home address of the owner;
(d) name and address of any lienholder;
(e) amount due under any contract or lien;
(f) name of the manufacturer;
(g) model number or name;
(h) identification number;
(i) name and address of the dealer or other person from whom acquired, if known; and
(j) other information as the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, a bill of sale, a foreign title, an official certificate of boat number, a fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired, if known, and other information requested by the department of justice.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.

(5) A motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number on the motorboat or sailboat must be assigned an identification number by the department of fish, wildlife,

and parks. A fee of $1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, $3.50 of which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(9) A person who, on July 1, 1988, is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat unless the person transfers a part of the person's interest in the motorboat or sailboat or renews the certificate of number for the motorboat or sailboat.

(10) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the boat encumbered. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete boat description, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the boat encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the boat is to be registered. The owner of a boat is the person entitled to operate and possess the boat.

(11) A security interest in a boat held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9.

(12) Whenever a security interest or lien is filed against a boat that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership:

"NOTICE. This boat is subject to additional security interest on file with the Department of Justice." No other information regarding the additional security interests need be endorsed on the certificate.

(13) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(14) Except as provided in subsection (15), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(15) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department of justice shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department of justice, of the existence of the security interest.

(16) Upon default under a chattel mortgage or conditional sales contract covering a boat, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a boat all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(17) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that the person fails to file the satisfaction.

(18) Upon receipt of notice of any involuntary liens or attachments against the record of any boat registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(19) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

(20) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a boat. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security

interest or other lien on file with the department of justice or for filing an assignment of any security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504.

History: En. Sec. 1, Ch. 433, L. 1987; amd. Sec. 13, Ch. 649, L. 1987; amd. Sec. 1, Ch. 165, L. 1989; amd. Secs. 1, 14, Ch. 398, L. 1989; amd. Sec. 1, Ch. 535, L. 1989; amd. Sec. 22, Ch. 16, L. 1991; amd. Sec. 2, Ch. 463, L. 1991; amd. Sec. 1, Ch. 482, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 482 at beginning of (10) deleted "A security interest in a boat is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been perfected as provided in this section. The lien notice must be filed on a form approved by the department of justice", in first sentence substituted "voluntary security interest or lien" for "security interest or other lien", at beginning of second sentence, before "lien", inserted "approved", in fourth sentence substituted "voluntary security interests and liens" for "security interest or lien", and inserted fifth sentence requiring involuntary liens to be filed against record of encumbered boat; at end of (11), after "9", deleted "and no endorsement on the certificate of title is necessary for perfection"; at beginning of (14) inserted exception clause and near beginning, after "lien", deleted "as provided in this section"; inserted (15) providing that voluntary security interests or lien filings not requiring ownership transfer are perfected on date Department of Justice receives lien notice and certificate of ownership, requiring Department to issue secured party receipt evidencing perfection, and providing that perfection constitutes constructive notice to subsequent purchasers or encumbrancers from date lien notice is delivered to Department; near beginning of (18) substituted "notice of any involuntary liens" for "liens, notice of liens dependent on possession"; and made minor changes in style.

23-2-509. Lost or mutilated certificate. (1) If a certificate of ownership is lost or mutilated or becomes illegible, the person to whom it was issued shall immediately make application for and obtain a duplicate, upon payment of a fee of $3.

(2) The duplicate certificate of ownership must be plainly marked "duplicate" across its face and be mailed or delivered to the applicant.

History: En. Sec. 2, Ch. 433, L. 1987; amd. Sec. 2, Ch. 535, L. 1989.

23-2-510. Transfer of interest. (1) Except as provided in subsection (3), upon a transfer of a certificate of ownership to a motorboat or sailboat 12 feet in length or longer registered as required under the provisions of this part, the person whose title or interest is to be transferred shall sign the certificate of ownership issued for the motorboat or sailboat in the appropriate space provided on the reverse side of the certificate, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, or a notary public.

(2) Within 30 calendar days after endorsement, the transferee shall make application for transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and also make application for registration of the motorboat or sailboat. The county treasurer shall forward the application to the department of justice, which shall file the application upon receipt. A certificate of ownership may not be issued by the department until any outstanding certificate is surrendered to the department or its loss is established to the department's reasonable satisfaction. The county treasurer shall collect a fee of $5 for each application for transfer of ownership, of which $3.50 must be forwarded to the department of justice for deposit in the general fund.

(3) A purchaser of a new or used motorboat or sailboat 12 feet in length or longer from a licensed dealer has a grace period of 30 calendar days from the date of purchase to register the motorboat or sailboat, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the vessel for the current year. It is not a violation of this part or any other law for the purchaser to operate a newly acquired motorboat or sailboat 12 feet in length or longer without a certificate of ownership, certificate of registration, and decal during the 30-day grace period. During this period the sticker provided for in subsection (4) must remain affixed to the motorboat or sailboat.

(4) Prior to the delivery of a motorboat or sailboat 12 feet in length or longer to the purchaser, the dealer shall issue and affix to a motorboat or sailboat constructed after October 31, 1972, a sticker as prescribed by the department of justice. The sticker must contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the motorboat or sailboat, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) A purchaser of a new or used motorboat or sailboat who is unable to record a transfer of ownership with the county treasurer at the time he makes application for registration of the motorboat or sailboat because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere may, upon making affidavit to that effect upon a form prescribed by the department of justice and upon the payment of the applicable fee in lieu of tax plus a fee of $2 to be collected by the county treasurer and remitted to the department of justice, obtain from the county treasurer of the county in which the boat is to be registered a temporary boat sticker of a size, color, and design as the department of justice may prescribe, to be validated by the county treasurer for a period of 60 days from the date of issuance. The purchaser, upon displaying the sticker conspicuously on the motorboat or sailboat, may operate the motorboat or sailboat during the period for which the boat sticker has been validated without displaying the numbers and license decal for the current year. The county treasurer may not sell, and a person may not purchase, more than one 60-day temporary boat sticker for any motorboat or sailboat, the ownership of which has not changed since the issuance of the previous 60-day boat sticker.

(6) The provisions of subsection (2) do not apply in the event of the transfer of a motorboat or sailboat 12 feet in length or longer to a duly licensed dealer intending to resell the motorboat or sailboat and who operates it only for demonstration purposes, but every dealer, upon transferring his interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien.

(7) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of owner-

ship, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(8) The provisions of 61-3-201(3) through (7) that apply to motor vehicles also apply to any certificate of ownership transferred under this section.

History: En. Sec. 3, Ch. 433, L. 1987; amd. Sec. 1, Ch. 363, L. 1989; amd. Sec. 1, Ch. 375, L. 1989; amd. Sec. 2, Ch. 398, L. 1989; amd. Sec. 3, Ch. 535, L. 1989; amd. Sec. 1, Ch. 375, L. 1991.

23-2-511. Operation of unnumbered motorboats prohibited — display of decals. (1) Every motorboat on the waters of this state, propelled by a motor or an engine of any description, must be properly numbered and display valid license decals. No person may operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and displays valid license decals in accordance with this part, with applicable federal law, or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat is in full force and effect;

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on such motorboat; and

(c) a temporary permit has been obtained from the county in which the boat is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in 7-16-2121.

(2) Upon transfer of ownership of a motorboat from a registered boat dealer or manufacturer, the transferred motorboat may be operated on the waters of this state for 30 consecutive calendar days immediately following the transfer of ownership without displaying the numbers and license decal required by subsection (1) provided that when the motorboat is operated during those 30 consecutive calendar days, a bill of sale or other evidence of transfer reciting the date of the transfer of ownership is retained in the motorboat and is exhibited to a warden or other officer upon request.

History: En. Sec. 3, Ch. 285, L. 1959; amd. Sec. 1, Ch. 348, L. 1969; amd. Sec. 2, Ch. 514, L. 1973; amd. Sec. 1, Ch. 306, L. 1975; amd. Sec. 6, Ch. 124, L. 1977; R.C.M. 1947, 69-3503; amd. Sec. 1, Ch. 136, L. 1979; amd. Sec. 1, Ch. 311, L. 1985; amd. Sec. 1, Ch. 118, L. 1987; amd. Sec. 2, Ch. 375, L. 1991.

23-2-512. Identification number. (1) The owner of each motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of $2.50. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner.

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft for the

current year of certification before the application for certification or recertification may be accepted by the county treasurer.

(3) Should the ownership of a motorboat, sailboat, or personal watercraft change, a new application form with the certification fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part continues in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part.

(7) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of the purchaser's interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within reasonable time if the holder's address no longer conforms to the address appearing on the certificate and shall furnish the county treasurer with the new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. Numerals, letters, or devices other than those used in connection with the identifying number issued may not be placed in the proximity of the identifying number.

Numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may not be carried in a manner that interferes with the motorboat's, sailboat's, or personal watercraft's identification. A number other than the number and license decal assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may not be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft.

(b) The certificate of number must be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

(10) (a) Except as provided in subsection (10)(b), fees, other than the fee in lieu of tax, collected under this section must be transmitted to the state treasurer, who shall deposit the fees in the motorboat or sailboat certificate identification account of the state special revenue fund. These fees must be used only for the administration and enforcement of this part, as amended.

(b) Of the fee collected under the provisions of subsection (1), 20% must be deposited by the state treasurer in an account in the state special revenue fund to the credit of the department to be used to acquire and maintain marine sewage pumpout equipment and other boat facilities.

(11) An owner of a motorboat, sailboat, or personal watercraft must within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name when the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, abandoned, or frauded or within 60 days after change of state of principal use or if a motorboat becomes documented as a vessel of the United States.

History: En. Sec. 4, Ch. 285, L. 1959; amd. Sec. 1, Ch. 219, L. 1961; amd. Sec. 1, Ch. 336, L. 1969; amd. Sec. 2, Ch. 348, L. 1969; amd. Sec. 45, Ch. 391, L. 1973; amd. Sec. 51, Ch. 511, L. 1973; amd. Sec. 3, Ch. 514, L. 1973; amd. Sec. 1, Ch. 52, L. 1974; amd. Sec. 7, Ch. 124, L. 1977; amd. Sec. 45, Ch. 566, L. 1977; R.C.M. 1947, 69-3504(1), (2), (3), (6) thru (14); amd. Sec. 2, Ch. 136, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 312, L. 1985; amd. Sec. 6, Ch. 649, L. 1987; amd. Sec. 2, Ch. 577, L. 1989; amd. Sec. 10, Ch. 728, L. 1991; amd. Sec. 1, Ch. 126, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 126 in second sentence of (1) increased fee from $2 to $2.50; at beginning of (10)(a) inserted exception clause; inserted (10)(b) allocating 20% of the fee for acquisition and maintenance of marine pumpout equipment and other boat facilities; and made minor changes in style. Amendment effective July 1, 1993.

23-2-513. Dealer's identification number — premises — inspection — bond — judgment. (1) A dealer or manufacturer may apply directly to the department of justice for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on his boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer.

(2) The application for a dealer's or manufacturer's identifying number must include his name and business address. Each dealer or manufacturer will have one identifying number assigned to his business.

(3) An application for dealer's or manufacturer's identifying number and certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and set of license decals, $5;

(b) for each additional certificate of number and set of license decals applied for in any application, $2.

(4) The department of justice shall issue certificates of number for the identifying numbers assigned to a dealer or manufacturer in the same manner as provided in 23-2-512(1) and (9), as amended, except that no boat may be described in the certificate and each certificate must state that the identifying number has been assigned to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on December 31 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in 23-2-512(9), as amended, except that the number may be temporarily attached. The last three letters shall be "DLR" for dealer and "MFR" for manufacturer. These letters shall be included, respectively, in dealer or manufacturer identification numbers only.

(6) No person other than a dealer or manufacturer or an employee of a dealer or manufacturer may display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) No dealer or manufacturer or employee of a dealer or manufacturer may use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) of this section.

(8) A dealer shall maintain a principal place of business, coinciding with the business address listed on the application, where he maintains all business records and where he displays, sells, and services merchandise. The dealer shall display a sign at the place of business that clearly states the name of the business. The premises of the dealer's principal place of business must be inspected by an official of the department of justice to assure compliance with this section.

(9) In order to qualify for renewal of a boat dealer's license, the dealer shall certify to the department of justice upon application for renewal that he sold five or more boats during the previous license year. If five or more boats were not sold, an additional fee of $50 is required for renewal of the dealer's license.

(10) (a) The applicant for a boat dealer's license shall file with his application a bond of $5,000. The bond must be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department of justice and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required.

History: **En. Sec. 4, Ch. 285, L. 1959; amd. Sec. 1, Ch. 219, L. 1961; amd. Sec. 1, Ch. 336, L. 1969; amd. Sec. 2, Ch. 348, L. 1969; amd. Sec. 45, Ch. 391, L. 1973; amd. Sec. 51, Ch. 511, L. 1973; amd. Sec. 3, Ch. 514, L. 1973; amd. Sec. 1, Ch. 52, L. 1974; amd. Sec. 7, Ch. 124, L. 1977; amd. Sec. 45, Ch. 566, L. 1977; R.C.M. 1947, 69-3504(4), (5); amd. Sec. 3, Ch. 136, L. 1979; amd. Sec. 2, Ch. 312, L. 1985; amd. Sec. 34, Ch. 83, L. 1989; amd. Sec. 3, Ch. 375, L. 1991.**

23-2-514. Exemption from numbering provisions. A motorboat is not required to be numbered under this part if it is:

(1) covered by a number in full force and effect that has been assigned to it pursuant to federal law or a federally approved numbering system of another state, provided that such vessel shall not have been within this state for a period in excess of 90 consecutive days. After 90 consecutive days within this state, this state becomes the motorboat's state of principal use and the owner must apply for a Montana number, certificate of number, and license decal.

(2) a motorboat from a country other than the United States temporarily using the waters of this state;

(3) a motorboat whose owner is the United States, a state, or subdivision thereof;

(4) a ship's lifeboat.

History: **En. Sec. 6, Ch. 285, L. 1959; amd. Sec. 6, Ch. 514, L. 1973; R.C.M. 1947, 69-3506; amd. Sec. 4, Ch. 136, L. 1979; amd. Sec. 1, Ch. 168, L. 1979.**

23-2-515. License decals to be displayed. (1) Every Montana motorboat, sailboat, or personal watercraft numbered in accordance with the provisions of 23-2-512 or 23-2-513 shall be required to display license decals. For this purpose the county treasurer, upon proof of payment of the fee in lieu of tax as required by 15-16-202 for motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, or personal watercraft, shall issue a pair of decals prepared and furnished by the department of justice with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the department of justice and shall be a color differing from the preceding year. The license decal will be serially numbered and have the expiration date of December 31 of the appropriate year printed thereon.

(3) License decals shall be displayed only in the following manner: one valid license decal on each side of the forward half, 3 inches aft of the identifying numbers.

History: **En. Sec. 3, Ch. 348, L. 1969; amd. Sec. 46, Ch. 391, L. 1973; amd. Sec. 4, Ch. 514, L. 1973; amd. Sec. 2, Ch. 52, L. 1974; R.C.M. 1947, 69-3504.1; amd. Sec. 3, Ch. 312, L. 1985; amd. Sec. 2, Ch. 421, L. 1987; amd. Sec. 7, Ch. 649, L. 1987; amd. Sec. 3, Ch. 577, L. 1989.**

23-2-516. Fee in lieu of tax for motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons. (1) There is a fee in lieu of property tax as prescribed in 23-2-517 imposed on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons. The fee is in addition to the annual fee required by 23-2-512 for filing of the application for a certificate of number.

(2) The fee imposed by subsection (1) need not be paid by a dealer for motorboats, sailboats, personal watercraft, motorized canoes, motorized rubber rafts, or motorized pontoons that constitute inventory of the dealership.

History: En. Sec. 8, Ch. 649, L. 1987; amd. Sec. 4, Ch. 577, L. 1989.

23-2-517. Fees for motorboats, sailboats, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons. (1) The owner of a motorboat 10 feet in length or longer or a sailboat 12 feet in length or longer shall pay a fee based on the length and age of the motorboat or sailboat as follows:

(a) The fee schedule for a motorboat at least 10 feet in length but less than 14 feet in length or sailboat at least 12 feet in length but less than 14 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $7.50;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $5.65; and

(iii) for a motorboat or sailboat 10 years of age or older, $3.75.

(b) The fee schedule for a motorboat or sailboat at least 14 feet in length but less than 16 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $15;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $11.25; and

(iii) for a motorboat or sailboat 10 years of age or older, $7.50.

(c) The fee schedule for a motorboat or sailboat at least 16 feet in length but less than 17 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $32;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $24; and

(iii) for a motorboat or sailboat 10 years of age or older, $16.

(d) The fee schedule for a motorboat or sailboat at least 17 feet in length but less than 19 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $3 a foot or fraction of a foot;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $2.25 a foot or fraction of a foot; and

(iii) for a motorboat or sailboat 10 years of age or older, $1.50 a foot or fraction of a foot.

(e) The fee schedule for a motorboat or sailboat 19 feet in length or longer is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $4 a foot or fraction of a foot;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $3 a foot or fraction of a foot; and

(iii) for a motorboat or sailboat 10 years of age or older, $2 a foot or fraction of a foot.

(2) The owner of a personal watercraft shall pay a fee based on the age of the watercraft as follows:

(a) The fee for a personal watercraft less than 4 years of age is $22.

(b) The fee for a personal watercraft 4 years of age or older is $15.

(3) The fee for a motorized canoe, a canoe or kayak propelled by wind, or a motorized rubber raft is $7.50, regardless of its length or age.

(4) The fee for a motorized pontoon is $20, regardless of its length or age.

History: En. Sec. 9, Ch. 649, L. 1987; amd. Sec. 5, Ch. 577, L. 1989.

23-2-518. *(Temporary)* **Disposition of fees in lieu of tax.** (1) Except for fees allocated under subsection (2), the county treasurer shall distribute all fees in lieu of tax collected on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons pursuant to 23-2-516 and 23-2-517 in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall allocate 25% of all fees in lieu of tax collected under this section to the motorboat account in the state special revenue fund for use by the department as provided in 23-2-533. *(Terminates July 1, 1995—sec. 6, Ch. 511, L. 1993.)*

23-2-518. *(Effective July 1, 1995)* **Disposition of fees in lieu of tax.** The county treasurer shall distribute all fees in lieu of tax collected on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons pursuant to 23-2-516 and 23-2-517 in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

History: En. Sec. 10, Ch. 649, L. 1987; amd. Sec. 6, Ch. 577, L. 1989; amd. Sec. 1, Ch. 511, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 511 at beginning of (1) inserted exception clause; and inserted (2) requiring allocation of 25% of fees to motorboat account. Amendment effective July 1, 1993, and terminates June 30, 1995.

Termination: Section 6, Ch. 511, L. 1993, provided: "[This act] terminates June 30, 1995."

23-2-519. Penalty — disposition. (1) Failure to pay the fee in lieu of tax as provided for in 23-2-517 is a misdemeanor, punishable by a fine equal to five times the fee in lieu of tax that is due on the motorboat, sailboat, personal watercraft, motorized canoe, motorized rubber raft, or motorized pontoon for the current year of registration.

(2) All fines collected pursuant to subsection (1) must be distributed in the following ratio:

(a) 50% to the general fund of the county in which the motorboat, sailboat, personal watercraft, motorized canoe, motorized rubber raft, or motorized pontoon is issued a certification number; and

(b) 50% to the motorboat account of the state special revenue fund for use by the department in the enforcement of this part.

History: En. Sec. 11, Ch. 649, L. 1987; amd. Sec. 7, Ch. 577, L. 1989.

23-2-520. Mail renewal and recertification. The mail renewal procedure developed by the department of justice pursuant to 61-3-535 may be used for mail recertification of boats, the renewal of license decals, and the payment of the fee in lieu of tax.

History: En. Sec. 9, Ch. 604, L. 1991.

23-2-521. Equipment. (1) Every motorboat or vessel must have aboard:

(a) one United States coast guard approved personal flotation device in good and serviceable condition for each person on board, provided that a person who has not reached his 12th birthday must have a United States coast guard approved life preserver properly fastened to his person when occupying a motorboat or vessel under 26 feet in length while the motorboat or vessel is in motion;

(b) if carrying or using an inflammable or toxic fluid in an enclosure for any purpose and if the motorboat or vessel is not an entirely open one, an efficient natural or mechanical ventilation system prescribed by the department that must be used and be capable of removing resulting gases prior to and during the time the motorboat or vessel is occupied by a person;

(c) hand portable fire extinguishers approved by the United States coast guard, the number of which is to be determined by the department, or a United States coast guard approved fixed fire extinguishing system, except that motorboats less than 26 feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry the portable fire extinguishers or fire extinguishing systems.

(2) Every motorboat or vessel must have the carburetor or carburetors of each of its engines (except outboard motors) using gasoline as fuel equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) (a) Except as provided in subsection (3)(b), the exhaust of an internal combustion engine used on a motorboat or vessel must be muffled either by discharge underwater or by a functioning muffler capable of muffling exhaust noise to 90 dbA or less when measured at a distance of 1 meter from the muffler at idle speed in accordance with the stationary sound level measurement procedure for pleasure motorboats (SAE J2005). The muffler may not be modified or altered, such as by a cutout. The department may require a test at dockside to determine exhaust noise level.

(b) The provisions of subsection (3)(a) do not apply to a motorboat:

(i) competing in a state-sanctioned regatta or boat race while on trial runs between 9 a.m. and 5 p.m. and during a period not more than 48 hours immediately preceding the regatta or boat race;

(ii) operating under a separate permit issued by the department for the purpose of tuning engines, making test or trial runs, or competing in official trials for speed records other than in connection with regattas or boat races; or

(iii) operated by an authorized agent of federal, state, or local government to carry out his duty of enforcement, search and rescue, firefighting, or research.

(4) (a) Except as provided in subsection (4)(b), a vessel may not be equipped with a siren, and a person may not use or install a siren on a vessel.

(b) An authorized emergency vessel may be equipped with a siren capable of sound audible under normal conditions from a distance of not less than 500 feet, but the siren may be used only when the vessel is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, and the operator of the vessel must sound the siren when necessary to warn persons of the vessel's approach.

(5) When in operation or at anchor or moored away from a docking facility between sunset and sunrise, all vessels must display lights as prescribed by the department.

(6) The department may designate waters where and the time of year on these waters when all persons aboard a motorboat or vessel shall wear approved life preservers at all times.

(7) Vessels, including houseboats and floating cabins, equipped with a galley or toilet must have a wastewater holding system sealed to prevent the discharge of water-carried waste products, whether treated or untreated, into the surrounding waters.

(8) The department may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(9) A person may not operate or give permission for the operation of a vessel that is not equipped as required by this section.

History: En. Sec. 5, Ch. 285, L. 1959; amd. Sec. 1, Ch. 138, L. 1961; amd. Sec. 2, Ch. 230, L. 1963; amd. Sec. 1, Ch. 169, L. 1965; amd. Sec. 52, Ch. 511, L. 1973; amd. Sec. 5, Ch. 514, L. 1973; amd. Sec. 1, Ch. 305, L. 1975; amd. Sec. 8, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3505; amd. Sec. 1, Ch. 348, L. 1987; amd. Sec. 2, Ch. 728, L. 1991.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

23-2-522. Discharge of waste from vessel prohibited. (1) No person shall discharge or cause, permit, or suffer to be discharged any garbage, refuse, waste, or sewage from any vessel into, upon, or near the waters at any stream, river, or lake within the boundaries of the state of Montana.

(2) The department of health and environmental sciences shall adopt rules to protect water quality and aquatic ecosystems by establishing guidelines for the installation of vessel pumpout facilities.

(3) In adopting the rules, the department shall use these definitions:

(a) "Vessel terminal" means a private or public shoreside installation on any waters of Montana that provides mooring, docking, berthing, and other facilities for the use of vessels.

(b) "Marine sanitation device" means any equipment on board a vessel that is designed to receive, retain, treat, or discharge sewage, and any process to treat the sewage.

(4) The rules must include standards for the construction, operation, and maintenance of vessel pumpout facilities.

(5) Nothing in this section may be construed to require the department to install pumpout facilities without prior legislative approval and an appropriation.

History: En. Sec. 2, Ch. 169, L. 1965; amd. Sec. 8, Ch. 514, L. 1973; amd. Sec. 11, Ch. 124, L. 1977; R.C.M. 1947, 69-3508.1; (2) thru (5) En. Sec. 9, Ch. 728, L. 1991.

23-2-523. Prohibited operation and mooring — enforcement. (1) A person may not operate or knowingly permit a person to operate a motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person by:

(a) engaging in maneuvers that unreasonably or unnecessarily endanger life, limb, or property, including but not limited to weaving through congested vessel traffic or jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed and including swerving at the last possible moment to avoid collision, following directly behind a waterskier, speeding in confined or restricted areas, and buzzing or wetting down others, which constitute reckless operation of a vessel;

(b) crossing or jumping the wake of another vessel when within 100 yards of the vessel or within 100 yards of a waterskier being towed by the vessel, except when directly entering or leaving a public or private marina, waterski facility, or other watercraft docking or loading area.

(2) A person may not operate any motorboat, including a sailboat propelled by a motor of any kind, or manipulate any water skis, surfboard, or similar device attached to a motorboat while under the influence of alcohol, drugs, or a combination of the two.

(3) It is unlawful for the owner of a motorboat or vessel or a person having the motorboat or vessel in charge or in control to authorize or knowingly permit the same to be operated by a person who by reason of physical or mental disability is incapable of operating the watercraft under the prevailing circumstances.

(4) A person may not operate or knowingly permit a person to operate a motorboat or vessel at a rate of speed greater than will permit the person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta that is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) A person may not make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a United States coast guard approved personal flotation device in good and serviceable condition.

(7) A person may not moor a vessel to buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on the buoy or beacon, nor may any person deface, remove, or destroy a buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment such use creates an especially hazardous condition, he may direct the operator to take

whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to a mooring or launching site and to remain there until the situation creating the hazard is corrected or ended.

(9) The population density and heavy recreational use of certain lakes require a noise standard more restrictive than the standard set in 23-2-526, in order to protect the public health and safety. Unless operated on a river or stream in compliance with a commission rule adopted under 23-2-521(9), a person may not operate a motorboat or personal watercraft on Flathead Lake, situated in Lake and Flathead Counties, Echo Lake, situated in Flathead County, or Swan Lake, situated in Lake County, in proximity to the shoreline if the noise emitted is greater than 75 dbA measured at the shoreline in accordance with the shoreline sound level measurement procedure (SAE J1970).

(10) Unless accompanied by a person 18 years of age or older, a person 12 years of age or younger may not operate a motorboat or a personal watercraft that is powered by a motor rated at more than 10 horsepower. After December 31, 1993, a person under 15 years of age may not operate a vessel or personal watercraft powered by a motor rated at more than 10 horsepower without possessing a valid Montana motorboat operator's safety certificate or evidence of completion of a Montana-approved water safety course.

(11) A person who owns or has charge or control of a motorboat or personal watercraft powered by a motor rated at more than 10 horsepower may not authorize or knowingly permit the motorboat or personal watercraft to be operated:

(a) by a person 12 years of age or younger unless accompanied by a person 18 years of age or older; or

(b) after December 31, 1993, by a person under 15 years of age unless the person possesses a valid Montana motorboat operator's safety certificate or evidence of completion of a Montana-approved water safety course or is accompanied by a person 18 years of age or older.

(12) A person may not rent a motorboat or a personal watercraft powered by a motor rated at more than 10 horsepower to a person under 18 years of age.

History: En. Sec. 8, Ch. 285, L. 1959; amd. Sec. 7, Ch. 514, L. 1973; amd. Sec. 10, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3508; amd. Sec. 1, Ch. 497, L. 1987; amd. Sec. 3, Ch. 728, L. 1991; amd. Sec. 12, Ch. 789, L. 1991.

23-2-524. Passing rule and right-of-way. (1) When two vessels are approaching each other "head on" or nearly so (so as to involve risk of collision), each vessel shall bear to the right and pass the other vessel on its left side.

(2) When vessels approach each other obliquely or at right angles, the vessel approaching on the right side has the right-of-way.

(3) One vessel may overtake another on either side but shall grant right-of-way to the overtaken vessel.

(4) When a sailboat and motorboat are operating as to involve a risk of collision with each other, the motorboat shall yield the right-of-way to the sailboat in all cases.

History: En. Sec. 9, Ch. 285, L. 1959; R.C.M. 1947, 69-3509.

23-2-525. Restricted areas. (1) No person shall so anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in such a position as to obstruct a passageway ordinarily used by other vessels.

(2) No person shall operate a pleasure vessel within 20 feet of the exterior boundary of a water area which is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas shall be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of such areas.

(3) No person shall, without permission, operate or knowingly permit any person to operate a vessel within 50 feet of a person engaged in fishing, unless unavoidable.

(4) (a) No person shall purposely, knowingly, or negligently operate a motorboat upon the waters of this state within 100 feet of a tow-float or buoy displaying a "diver-down" symbol, red with a white slash, on a flag.

(b) The motorboat may enter the 100-foot safety zone by use of sail or oar. In an emergency or if there is insufficient water on either side of the 100-foot safety zone to pass by and stay out of the zone, the operator may use power within the zone but may not exceed no-wake speed. The burden of proving that an emergency exists or that there is insufficient water is on the operator.

(c) The fish, wildlife, and parks commission may by rule determine areas where establishment of a 100-foot safety zone is not allowed in order to provide for diver safety or the regulation of water traffic.

History: En. Sec. 10, Ch. 285, L. 1959; amd. Sec. 10, Ch. 514, L. 1973; R.C.M. 1947, 69-3510; amd. Sec. 1, Ch. 44, L. 1989; amd. Sec. 2, Ch. 28, L. 1991.

23-2-526. Overloading — overpowering — noise limitations. (1) No vessel shall be loaded with passengers or cargo beyond its safe carrying capacity, taking into consideration weather and other normal operating conditions.

(2) No vessel shall be equipped with any motor or other propulsion machinery beyond its safe power capacity, taking into consideration the type and construction of such watercraft and other existing operating conditions.

(3) Except as provided in 23-2-523(9), for the purposes of 45-8-101 and 45-8-111, the operation of a motorboat or personal watercraft that emits noise in excess of 86 dbA when measured at a distance of 50 feet or emits exhaust noise in excess of 90 dbA measured 1 meter from the muffler at idle speed in accordance with the stationary sound level measurement procedure for pleasure motorboats (SAE J2005) is presumed to be a public nuisance and constitute disorderly conduct, except when otherwise lawfully operated under a motorboat racing permit issued by a political subdivision of the state.

History: En. Sec. 11, Ch. 285, L. 1959; R.C.M. 1947, 69-3511; (3)En. Sec. 2, Ch. 694, L. 1983; amd. Sec. 4, Ch. 728, L. 1991.

23-2-527. Collisions, accidents, and casualties. (1) The operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), shall render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty and give his name, address, and identification of his vessel in writing to any person injured and to the owner or person in control of any property damaged in the collision, accident, or other casualty.

(2) The department shall prepare and distribute to each sheriff's office and each game warden of this state a standardized accident report form. Any person involved in a collision, accident, or other casualty involving a death, disappearance, personal injury, or property damage in excess of $100 shall immediately report such collision, accident, or other casualty to the sheriff's office or game warden of the county in which the collision, accident, or casualty occurred and fill out a standardized accident report form.

(3) A sheriff advised of a collision, accident, or other casualty reported under this part shall:

(a) conduct an appropriate investigation of such collision, accident, or other casualty; and

(b) prepare and submit a report of the results of the investigation, together with the completed standardized accident report forms, to the department.

History: En. Sec. 12, Ch. 285, L. 1959; amd. Sec. 11, Ch. 514, L. 1973; amd. Sec. 12, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3512.

23-2-528. Transmittal of information to U.S. officials. In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the department pursuant to subsections (2) and (3) of 23-2-527, as amended, shall be transmitted to such official or agency of the United States.

History: En. Sec. 13, Ch. 285, L. 1959; amd. Sec. 13, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3513.

23-2-529. Water skis and surfboards. (1) A person may not operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on water skis, a surfboard, or similar device unless the operator is accompanied by an observer. If the operator is 12 years of age or younger, there must be a second person, at least 18 years of age, in the vessel to observe the person being towed. The fish, wildlife, and parks commission shall adopt rules regarding the proper observation and safe towing of persons on water skis or similar devices, based on density of use of a body of water.

(2) A person may not operate a motorboat or vessel towing a person engaged in waterskiing, surfboarding, or similar activity or towing some other contrivances nor may a person engage in those activities at any time between the hours from sunset to sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.

(3) All right-of-way rules applying to a towing vessel apply to a person being towed.

History: En. Sec. 14, Ch. 285, L. 1959; amd. Sec. 12, Ch. 514, L. 1973; amd. Sec. 14, Ch. 124, L. 1977; R.C.M. 1947, 69-3514; amd. Sec. 5, Ch. 136, L. 1979; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 5, Ch. 728, L. 1991.

Cross-References

Passing rule and right-of-way, 23-2-524.

23-2-530. Education program. The department shall coordinate a statewide boat safety education program, including a home study testing program for motorboat operators.

History: En. Sec. 13, Ch. 514, L. 1973; amd. Sec. 16, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3516.1; amd. Sec. 6, Ch. 728, L. 1991.

23-2-531. Personal watercraft operation. In addition to all other applicable provisions in this part, a person may not operate a personal watercraft:

(1) unless each person operating or riding on the vessel is wearing a United States coast guard approved type I, II, III, or V personal flotation device;

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch unless the lanyard is attached to the operator's person, clothing, or personal flotation device as is appropriate for the specific vessel; or

(3) in a reckless or negligent manner. Actions prohibited in 23-2-523 are considered reckless operation.

History: En. Sec. 7, Ch. 728, L. 1991.

23-2-532. Restrictions on manufacture and sale. A motorboat or vessel that fails to comply with the provisions of 23-2-521(3) may not be manufactured in Montana after April 29, 1991, and may not be sold or offered for sale in Montana after January 1, 1994.

History: En. Sec. 8, Ch. 728, L. 1991.

23-2-533. *(Temporary)* **Use of percentage of boat fees for boat facilities — designation of fees for regional use.** (1) At the time the fee in lieu of tax imposed under 23-2-516 is collected, the payor shall designate the fish, wildlife, and parks administrative region in which the majority of the payor's boating activities take place. Upon receipt of the fee in the motorboat account in the state special revenue fund, the department shall earmark the fee for use in the designated region.

(2) All fees designated to the motorboat account by 23-2-518(2) must be used by the department to improve regional boating facilities under the control of the department and to cover costs associated with the boating advisory council created in 23-2-536. The department may use the fees to match available federal funds to the extent possible. Expenditure of fees must be made after consideration of recommendations by the boating advisory council. *(Terminates July 1, 1995—sec. 6, Ch. 511, L. 1993.)*

History: En. Sec. 2, Ch. 511, L. 1993.

Compiler's Comments

Effective Date: Section 5, Ch. 511, L. 1993, provided: "[This act] is effective July 1, 1993."

Termination: Section 6, Ch. 511, L. 1993, provided: "[This act] terminates June 30, 1995."

23-2-534 reserved.

23-2-535. Alcohol concentration standards — evidence admissible — administration of tests. (1) The inferences contained in 61-8-401(4) apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of his blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-405 and the definition of alcohol concentration provided in 61-8-407 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" shall have the meaning provided in 61-8-401(3).

History: En. Sec. 2, Ch. 497, L. 1987; amd. Sec. 13, Ch. 789, L. 1991.

23-2-536. *(Temporary)* **Creation of boating advisory council — appointment of members — duties.** (1) The department director appointed under 2-15-3401 shall appoint a boating advisory council to advise the department on the expenditure of funds made available under 23-2-518(2).

(2) The boating advisory council must be composed of five members of the public, each of whom must be interested in boating activities and the use of public boating facilities.

(3) The boating advisory council is attached to the department in an advisory capacity only, as defined in 2-15-102(8).

(4) All costs associated with the boating advisory council must be paid from the fees collected under 23-2-518(2). Council members are not entitled to compensation or travel expenses as provided in 2-15-122. *(Terminates July 1, 1995—sec. 6, Ch. 511, L. 1993.)*

History: En. Sec. 3, Ch. 511, L. 1993.

Compiler's Comments

Effective Date: Section 5, Ch. 511, L. 1993, provided: "[This act] is effective July 1, 1993."

Termination: Section 6, Ch. 511, L. 1993, provided: "[This act] terminates June 30, 1995."

Part 6
Snowmobiles

23-2-601. Definition of terms. As used in 23-2-601 through 23-2-644, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning is intended:

(1) "Certificate of ownership" means the document issued by the department of justice as prima facie evidence of ownership.

(2) "Certificate of registration" means the owner's receipt evidencing payment of taxes, decal fees, and registration fees for a given registration year.

(3) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "New snowmobile" means any snowmobile that has not been previously sold to an owner, as defined in subsection (7).

(6) "Operator" includes every person who operates or is in actual physical control of the operation of a snowmobile.

(7) "Owner" includes every person as defined herein, other than a lienholder or other person having a security interest only, holding a certificate of ownership to a snowmobile and entitled to the use or possession thereof.

(8) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not and regardless of the degree of formal organization.

(9) "Roadway" includes only those portions of any highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(10) "Snowmobile" includes any self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, which may be steered by skis or runners and which is not otherwise registered or licensed under the laws of the state of Montana.

History: En. Sec. 1, Ch. 434, L. 1971; amd. Sec. 1, Ch. 91, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 421, L. 1977; R.C.M. 1947, 53-1012; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 363, L. 1979.

23-2-602. Report of stolen and recovered snowmobiles. The reporting of stolen and recovered snowmobiles must be conducted in the same manner as the reporting of stolen and recovered motor vehicles provided for in 61-3-106.

History: En. Sec. 6, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1977; amd. Sec. 11, Ch. 421, L. 1977; R.C.M. 1947, 53-1017; amd. Sec. 1, Ch. 351, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 351 substituted present language regarding report of stolen and recovered snowmobiles in the same manner as motor vehicles for former section that read: "The sheriff of every county of the state and the chief of police or commissioner of police of every city shall make an immediate report to the department of justice of all snowmobiles reported to him as stolen or recovered, upon forms provided by the department of justice. Upon receipt of such information, the department of justice shall file the same in an index to be known as the "stolen and recovered snowmobile index". The department of justice shall file reports of stolen and recovered snowmobiles reported to it from other states. Once a month the department of justice shall prepare a list of all snowmobiles stolen or recovered during the previous month and forward a copy of the same to every sheriff and all police departments in cities of the first, second, and third class. Such list shall also be forwarded to the secretary of state or other proper official in each state of the United States. Before a certificate of ownership may be issued under 23-2-601 through 23-2-644, the motor and serial number on the snowmobile for which such certificate is to be issued shall be checked against the stolen and recovered snowmobile index." Amendment effective April 16, 1993.

23-2-603 through 23-2-610 reserved.

23-2-611. Certificate of ownership — filing of security interests. (1) A snowmobile may not be operated upon any private or public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state. A certificate of ownership is not required for a snowmobile purchased prior to April 16, 1993, if use of the snowmobile is restricted to private land.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) the name of the owner;
(b) the residence of the owner, by town and county;
(c) the business or home mailing address of the owner;
(d) the name and address of any lienholder;
(e) the amount due under any contract or lien;
(f) the name of the manufacturer;
(g) the model number or name;
(h) the identification number; and
(i) the name and address of the dealer or other person from whom acquired.

(3) The application must be accompanied by documentation of ownership, such as an invoice, notarized bill of sale from the immediately previous owner, foreign title, official certificate of snowmobile number, or fee in lieu of tax receipt.

(4) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(5) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

(6) Upon completion of the application, on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership, which must contain that information in the application considered necessary by the department of justice, and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, $3.50 of which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(9) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the snowmobile encumbered. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien

instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete snowmobile description, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the snowmobile encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the snowmobile is to be registered. The owner of a snowmobile is the person entitled to operate and possess the snowmobile.

(10) A security interest in a snowmobile held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9.

(11) Whenever a security interest or lien is filed against a snowmobile that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This snowmobile is subject to additional security interest on file with the Department of Justice". Other information regarding the additional security interests need not be endorsed on the certificate.

(12) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(13) Except as provided in subsection (14), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(14) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department of justice shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department of justice, of the existence of the security interest.

(15) Upon default under a chattel mortgage or conditional sales contract covering a snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a snowmobile, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(16) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that the satisfaction is not filed.

(17) Upon receipt of notice of any involuntary liens or attachments against the record of any snowmobile registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(18) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

(19) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a snowmobile. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504.

History: En. Sec. 2, Ch. 434, L. 1971; amd. Sec. 18, Ch. 391, L. 1973; amd. Sec. 1, Ch. 249, L. 1974; amd. Sec. 2, Ch. 421, L. 1977; R.C.M. 1947, 53-1013; amd. Sec. 2, Ch. 363, L. 1979; amd. Sec. 24, Ch. 712, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 164, L. 1989; amd. Secs. 3, 14, Ch. 398, L. 1989; amd. Sec. 4, Ch. 535, L. 1989; amd. Sec. 23, Ch. 16, L. 1991; amd. Sec. 3, Ch. 463, L. 1991; amd. Sec. 2, Ch. 351, L. 1993; amd. Sec. 2, Ch. 482, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 351 near beginning of first sentence of (1), after "any", inserted "private or" and inserted second sentence precluding necessity of ownership certificate for certain snowmobiles used only on private land; inserted (3) requiring documentation of ownership; and made minor changes in style. Amendment effective April 16, 1993.

Chapter 482 at beginning of (9) deleted two sentences that provided that a security interest in a snowmobile is not valid against subsequent purchasers or encumbrancers unless a lien notice has been perfected as provided in this section and filed on a form approved by the Department of Justice, in first sentence, before "security", inserted "voluntary" and before "lien" deleted "other", at beginning of second sentence, before "lien", inserted "approved", in fourth sentence substituted "voluntary security interests and liens" for "security interest or lien", and inserted fifth sentence requiring involuntary liens to be filed against the record of the encumbered snowmobile; in (10), after "9", deleted "and no endorsement on the certificate of title is necessary for perfection"; at beginning of (13) inserted exception clause and near beginning substituted "voluntary security interest or lien" for "security interest or other lien as provided in this section"; inserted (14) providing that voluntary security interests or lien filings not requiring ownership transfer are perfected on date Department of Justice receives lien notice and certificate of ownership, requiring Department to issue secured party receipt evidencing perfection, and providing that perfection constitutes constructive notice to subsequent purchasers or encumbrancers from date lien notice is delivered to Department; near beginning of (17) substituted "notice of any involuntary liens" for "liens, notice of liens dependent on possession"; and made minor changes in style.

A gender neutral change in (16) was slightly different in the two chapters. The codified chose the more appropriate of the two.

Cross-References

Use of snowmobiles on streams, 23-2-302.

Water pollution control, Title 75, ch. 5.

23-2-612. Transfer of interest. (1) Except as provided in subsection (3), upon a transfer of any certificate of ownership to a snowmobile registered as required under the provisions of 23-2-601 through 23-2-644, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the snowmobile in the appropriate space provided upon the reverse side of the certificate, and the signature shall be acknowledged before the county treasurer, a deputy county treasurer, or a notary public.

(2) Within 20 calendar days after endorsement, the transferee shall make application for transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and also make application for registration of the snowmobile. The county treasurer shall forward the application to the department of justice, which shall file the application upon receipt. A certificate of ownership may not be issued by the department of justice until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. The county treasurer shall collect a fee of $5 for each application for transfer of ownership, of which $3.50 must be forwarded to the department of justice for deposit in the general fund.

(3) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to register the snowmobile, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year. It is not a violation of 23-2-601 through 23-2-644 or any other law for the purchaser to operate a newly acquired snowmobile without a certificate of ownership, certificate of registration, and a decal during the 20-day period. During this period the sticker provided for in subsection (4) shall remain affixed to the snowmobile.

(4) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the department of justice). The sticker shall contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) do not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell the snowmobile and who operates it only for demonstration purposes, but every dealer, upon transferring his interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of 23-2-601 through 23-2-644. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a

new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien.

(6) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(7) The provisions of 61-3-201(3) through (7) that apply to motor vehicles also apply to any certificate of ownership transferred under this section.

History: (1), (2), (5)En. Sec. 3, Ch. 434, L. 1971; amd. Sec. 1, Ch. 124, L. 1977; amd. Sec. 2, Ch. 402, L. 1977; amd. Sec. 3, Ch. 421, L. 1977; Sec. 53-1014, R.C.M. 1947; (3), (4)En. 53-1013.1 by Sec. 1, Ch. 402, L. 1977; Sec. 53-1013.1, R.C.M 1947; R.C.M. 1947, 53-1013.1, 53-1014; amd. Sec. 3, Ch. 363, L. 1979; amd. Sec. 25, Ch. 712, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 341, L. 1985; amd. Sec. 2, Ch. 363, L. 1989; amd. Sec. 2, Ch. 375, L. 1989; amd. Sec. 4, Ch. 398, L. 1989; amd. Sec. 5, Ch. 535, L. 1989.

23-2-613. Lost or mutilated certificates. If any certificate of ownership is lost, mutilated, or becomes illegible, the person to whom it was issued shall immediately make application for and obtain a duplicate certificate, upon payment of a fee of $3.

History: En. Sec. 4, Ch. 434, L. 1971; amd. Sec. 4, Ch. 421, L. 1977; R.C.M. 1947, 53-1015; amd. Sec. 4, Ch. 363, L. 1979; amd. Sec. 6, Ch. 535, L. 1989.

23-2-614. Exemptions. (1) The provisions of 23-2-601 through 23-2-644, with respect to registration, tax-paid decals, and certification of ownership, do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision thereof, any snowmobile registered in a country other than the United States and to be temporarily used within this state for a period of not more than 30 days, or to any snowmobile registered in another state of the United States but to be temporarily used within this state for not more than 30 days. Snowmobiles owned by the state of Montana or any agency or political subdivision thereof are exempt only from the payment of fees and shall otherwise comply with all the requirements of 23-2-601 through 23-2-644.

(2) The provisions of 23-2-601 through 23-2-644 with respect to registration, tax-paid decals, and certification of ownership do not apply to unregistered snowmobiles owned by nonresidents of the state of Montana who either:

(a) display visual proof that a nonresident temporary-use permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules.

History: En. Sec. 5, Ch. 434, L. 1971; amd. Sec. 5, Ch. 421, L. 1977; R.C.M. 1947, 53-1016(1), (3); amd. Sec. 8, Ch. 363, L. 1979.

23-2-615. Nonresident temporary-use permits — use of fees. (1) The requirements pertaining to the nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

(i) the applicant's name and permanent address;

(ii) the make, model, year, and serial number of the snowmobile; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $6, a nonresident temporary-snowmobile-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid for a consecutive 30-day period as designated by the permit.

(3) The permit is not proof of ownership, and a certificate of ownership may not be issued.

(4) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(5) All money collected by payment of fees under this section must be turned over to the state treasurer and placed in the state special revenue fund to the credit of the department of fish, wildlife, and parks, with one-half to be used in administering this section and one-half to be used in the development, maintenance, and operation of snowmobile facilities.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100.

History: En. 53-1016.1 by Sec. 6, Ch. 421, L. 1977; R.C.M. 1947, 53-1016.1; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 351, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 351 inserted (4) exempting racing snowmobiles from permitting requirements; and made minor changes in style. Amendment effective April 16, 1993.

23-2-615.1. Fee in lieu of tax on snowmobiles. (1) There is a fee in lieu of tax on snowmobiles.

(2) The fee for a snowmobile less than 4 years old is $22. In all other cases the fee is $15.

(3) The age of a snowmobile is determined by subtracting the manufacturer's designated model year from the current calendar year.

(4) The fee need not be paid by a dealer for snowmobiles that constitute inventory of the dealership.

History: En. Sec. 4, Ch. 712, L. 1979.

23-2-616. Registration and decals — application and issuance — use of certain fees. (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration must be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application shall contain the following information:

(a) the name and address of the owner;

(b) the certificate of ownership number;

(c) the make of the snowmobile;

(d) the model name of the snowmobile;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and

(g) other information as the department of justice may require.

(3) The application must be accompanied by a decal fee of $5, a registration fee of 50 cents, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt that must contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the decal and registration fees and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202.

(6) All money collected from payment of the decal fees and all interest accruing from use of this money must be forwarded to the state treasurer and placed in the state special revenue fund to the credit of the department, with $2.50 designated for use in enforcing the purposes of 23-2-601 through 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities. All money collected from payment of the registration fee must be forwarded to the state treasurer and deposited in the general fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the county motor vehicle suspense fund provided for in 61-3-509.

History: (1) thru (6)En. Sec. 2, Ch. 435, L. 1971; amd. Sec. 19, Ch. 391, L. 1973; amd. Sec. 1, Ch. 494, L. 1973; amd. Sec. 2, Ch. 249, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 17, Ch. 421, L. 1977; amd. Sec. 44, Ch. 566, L. 1977; R.C.M. 1947, 53-1025; amd. Sec. 5, Ch. 363, L. 1979; amd. Sec. 26, Ch. 712, L. 1979; (7)En. Sec. 17, Ch. 712, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 421, L. 1987; amd. Sec. 5, Ch. 398, L. 1989; amd. Sec. 4, Ch. 351, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 351 at beginning of (1) inserted exception clause; near beginning of (3) increased decal fee from $2 to $5; in first sentence of (6) increased from $1 to $2.50 the amount designated for enforcement and from $1 to $2.50 the amount designated for snowmobile facilities; and made minor changes in style. Amendment effective April 16, 1993.

23-2-617. Duplicate decal. In the event any decal indicating that the fee in lieu of property tax has been paid on a snowmobile for the current year is lost, mutilated, or becomes illegible, the person to whom the same was issued shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of $1 to the county treasurer.

History: En. Sec. 2, Ch. 494, L. 1973; amd. Sec. 18, Ch. 421, L. 1977; R.C.M. 1947, 53-1025.1; amd. Sec. 27, Ch. 712, L. 1979.

23-2-618. Application for registration and decals to be made annually — grace periods. Application must be made annually to the county treasurer for registration and the issuance of a decal indicating that the fee in lieu of property tax has been paid for the current year. All registrations and decals expire on June 30 of each year.

History: En. Sec. 3, Ch. 435, L. 1971; amd. Sec. 3, Ch. 249, L. 1974; amd. Sec. 1, Ch. 327, L. 1975; amd. Sec. 4, Ch. 124, L. 1977; amd. Sec. 3, Ch. 402, L. 1977; R.C.M. 1947, 53-1026; amd. Sec. 6, Ch. 363, L. 1979; amd. Sec. 28, Ch. 712, L. 1979.

23-2-619. Dealer registration certificate — use of fees. (1) A dealer registration certificate must be issued in accordance with 23-2-601 through 23-2-644.

(2) The dealer application must be accompanied by an application fee of $5 and a registration fee of $5. Upon receipt of the dealer application and payment of fees, the dealer shall be issued two dealer snowmobile identification cards that must be carried by the dealer or the dealer's customer when demonstrating the dealer's snowmobiles.

(3) A bond is not required of the dealer.

(4) The dealer shall have a principal place of business where the dealer shall maintain all business records and display and sell merchandise.

(5) An applicant for renewal of a snowmobile dealer registration shall certify that the applicant has sold five or more snowmobiles during the preceding year or pay an additional $50 renewal registration fee or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Additional dealer snowmobile identification cards as required by need justified to the department of justice may be purchased by the dealer for a fee of $2.

(7) Dealer registration certificates and identification cards expire on June 30 following the date of issuance.

(8) (a) The dealer application fees and all interest accruing from use of this money must be deposited in the state special revenue fund to the credit of the department, with one-half designated for use in enforcing the purposes of 23-2-601 through 23-2-644 and one-half designated for use in the development, maintenance, and operation of snowmobile facilities.

(b) All money collected from dealer registration and renewal registration fees must be deposited in the general fund.

History: En. Sec. 3, Ch. 494, L. 1973; amd. Sec. 21, Ch. 421, L. 1977; R.C.M. 1947, 53-1029; amd. Sec. 7, Ch. 363, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 398, L. 1989; amd. Sec. 5, Ch. 351, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 351 near beginning of (5) increased from three or more to five or more the number of snowmobile sales applicable to renewal of dealer registration; and made minor changes in style. Amendment effective April 16, 1993.

23-2-620. Mail renewal and recertification. The mail renewal procedure developed by the department of justice pursuant to 61-3-535 may be used for mail recertification of snowmobiles, the renewal of license decals, and the payment of the fee in lieu of tax.

History: En. Sec. 10, Ch. 604, L. 1991.

23-2-621. Registration of a snowmobile owned and operated solely as a collector's item. (1) An owner of a snowmobile that is more than 25 years old and that is used solely as a collector's item and not for general recreational purposes may file with the county treasurer an application for the registration of the snowmobile. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the name and address of the person from whom the snowmobile was purchased;

(c) the make, the year and number of the model, and the manufacturer's identification number and serial number of the snowmobile; and

(d) that the snowmobile is owned and operated solely as a collector's item and not for general recreational purposes.

(2) The registration fee for a snowmobile registered under subsection (1) is $10.

(3) Upon receipt of the application for registration and payment of the registration fee, the county treasurer shall file the application, register the snowmobile in the manner specified in 23-2-616, and deliver to the applicant a license plate or decal bearing the inscription "Vintage—Montana" and the registration number.

(4) The year of issuance may not be shown on the plate or decal.

(5) Annual renewal of the registration of a snowmobile registered under this section is not required, and the registration is valid as long as the snowmobile is in existence. Upon sale of the snowmobile, the purchaser shall renew the registration and pay the license fee required in subsection (2).

History: En. Sec. 13, Ch. 351, L. 1993.

Compiler's Comments

Effective Date: Section 14, Ch. 351, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 16, 1993.

23-2-622. Registration of racing snowmobile not required. A snowmobile built or used exclusively for racing in sanctioned competitive events or organized races, including testing areas designated by the sponsoring entity, is exempt from the certificate of ownership requirements of 23-6-611 and registration under 23-2-616.

History: En. Sec. 12, Ch. 351, L. 1993.

Compiler's Comments

Effective Date: Section 14, Ch. 351, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 16, 1993.

23-2-623 through 23-2-630 reserved.

23-2-631. Operation on public roads and streets. (1) No person shall operate a snowmobile upon a controlled access highway or facility at any time. Snowmobile operation may be permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only in the event that the street, road, or highway is drifted or covered by snow to such an extent that travel thereon by other motor vehicles is impractical or impossible; the operator has received permission or is otherwise authorized for such travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or such operation has been specifically so authorized on municipal streets by a municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway whenever such crossing is necessary to get to another authorized area of operation. Such crossing shall be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The snowmobile shall make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(3) No snowmobile may be operated upon a public street or highway when permitted to do so by 23-2-601 through 23-2-644 unless equipped with at least one headlamp and one taillamp, which shall be lighted at all times during such operation, and unless equipped with a suitable braking device which may be operated by either hand or foot.

(4) The operator of a snowmobile who operates his vehicle upon a public roadway, street, or highway when allowed to do so under the provisions of 23-2-601 through 23-2-644 shall have in his possession a license to drive a motor vehicle as required by the laws of the state of Montana. An operator who crosses a street, road, or highway or who operates a snowmobile upon a street, road, or highway that is drifted or covered with snow to such an extent that travel thereon by other motor vehicles is impractical or impossible or who operates a snowmobile in any other areas of the state where operation is lawfully permitted is not required to apply for or possess a driver's license under the laws of the state of Montana.

History: En. Sec. 7, Ch. 434, L. 1971; amd. Sec. 12, Ch. 421, L. 1977; R.C.M. 1947, 53-1018.

Cross-References

Drivers' licenses, Title 61, ch. 5.

23-2-632. Unlawful operation of snowmobiles. (1) It is unlawful for a person to operate a snowmobile on a public street, public highway, established snowmobile trail, public snowmobile area on public lands or waters, or lands or waters under easement or lease for snowmobiling and adjacent snowmobiling areas on private lands or waters where public snowmobiling is permitted:

(a) at a rate of speed greater than provided by law for motor vehicles, unless travel on the street, highway, or trail has been closed to motor vehicle traffic or unless drifting snow or snow cover has rendered travel by motor vehicles impractical or impossible;

(b) in a careless or reckless manner so as to endanger the person or property of another or to cause injury or damage to either; or

(c) if that person by reason of age or mental or physical disability is incapable of operating the snowmobile safely under the prevailing circumstances.

(2) It is unlawful to permit the operation of a snowmobile in violation of subsection (1) by a person who by reason of age or physical or mental disability is incapable of operating the snowmobile safely under the prevailing circumstances.

History: En. Sec. 8, Ch. 434, L. 1971; amd. Sec. 3, Ch. 124, L. 1977; amd. Sec. 13, Ch. 421, L. 1977; R.C.M. 1947, 53-1019; amd. Sec. 6, Ch. 136, L. 1979; amd. Sec. 6, Ch. 351, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 351 near beginning of (1), before "highway", inserted "public" and after "highway" inserted "established snowmobile trail, public snowmobile area on public lands or waters, or lands or waters under easement or lease for snowmobiling and adjacent snowmobiling areas on private lands or waters where public snowmobiling is permitted"; near beginning of (1)(a), after "for motor vehicles", inserted "unless travel on the street, highway, or trail has been closed to motor vehicle traffic or unless drifting snow or snow cover has rendered travel by motor vehicles impractical or impossible"; deleted former (1)(b) that read: "(b) while under the influence of intoxicating liquor or narcotics or habit-forming drugs"; near beginning of (2), after "snowmobile", substituted "in violation of subsection (1)" for "on a public street or highway"; and made minor changes in style. Amendment effective April 16, 1993.

Cross-References

Careless and reckless driving — speed limits, 61-8-301 through 61-8-303, 61-8-306, 61-8-311, 61-8-313.

Driving under the influence, Title 61, ch. 8, part 4.

23-2-633. Other unlawful operation. No person while operating a snowmobile may use the same:

(1) for the purpose of driving, rallying, or harassing any of the game animals, game birds, or fur-bearing animals of the state or any livestock. An owner of livestock is not prohibited from managing or driving his own livestock by the use of snowmobiles and may direct other persons to so manage or drive his livestock; and the department of fish, wildlife, and parks, including its duly authorized employees, is not prohibited from managing or driving game animals, game birds, or fur-bearing animals by the use of snowmobiles.

(2) to discharge a firearm from or upon a snowmobile;

(3) without a lighted headlight and taillight between the hours of dusk and dawn.

History: En. Sec. 9, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1973; amd. Sec. 2, Ch. 91, L. 1974; amd. Sec. 1, Ch. 161, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 14, Ch. 421, L. 1977; R.C.M. 1947, 53-1020(1); amd. Sec. 2, Ch. 218, L. 1979.

23-2-634. Regulation of snowmobile noise. (1) Except as provided in this section, every snowmobile must be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. A snowmobile may not be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(2) Every person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain the machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(3) A snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may not be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. Every person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain the machine in such a manner that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(4) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of 23-2-601 through 23-2-644 shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(5) In certifying that a new snowmobile can comply with the noise limitation requirements of 23-2-601 through 23-2-644, a manufacturer shall make the certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this section, shall make measurements of snowmobile noise in accordance with applicable practices outlined in the "Procedure for Sound Level Measurements of Snowmobiles" (January, 1969), as amended, used by the international snowmobile industry association or with other standards for measurement of sound level as the department may adopt.

(6) This section does not apply to organized races or similar competitive events held on:

(a) private lands or waters, with the permission of the owner, lessee, or custodian of the land or waters; or

(b) public lands or waters, with the consent of the public agency having the authority to grant consent.

History: En. Sec. 9, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1973; amd. Sec. 2, Ch. 91, L. 1974; amd. Sec. 1, Ch. 161, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 14, Ch. 421, L. 1977; R.C.M. 1947, 53-1020(part); amd. Sec. 9, Ch. 363, L. 1979; amd. Sec. 7, Ch. 351, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 351 in (6)(a), in two places, and in (6)(b), after reference to lands, inserted "or waters"; at end of (6)(b), after "consent", deleted "provided that total sound produced by such an event may not exceed 50 dbA at any point 50 feet or more outside the area under the control of the sponsoring entity"; and made minor changes in style. Amendment effective April 16, 1993.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

23-2-635. Accidents involving snowmobiles. The owner or operator of a snowmobile that is involved in any accident, collision, or upset in which personal injury occurs to any person shall report the accident or occurrence to the nearest law enforcement agency. An accident involving personal injury or a fatality must be reported immediately or as soon as practicable.

History: En. Sec. 10, Ch. 434, L. 1971; R.C.M. 1947, 53-1021; amd. Sec. 8, Ch. 351, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 351 near beginning of first sentence, after "upset", substituted "in which" for "upon a public street or highway where", after "person" deleted "or where property damage exceeds $100", and at end substituted "the nearest law enforcement agency" for "a state or local law enforcement agency responsible for collecting reports of accidents involving motor vehicles" and inserted second sentence concerning reporting an accident involving personal injury or a fatality immediately or as soon as practicable; and made minor changes in style. Amendment effective April 16, 1993.

Cross-References

Uniform Accident Reporting Act, Title 61, ch. 7, part 1.

23-2-636 through 23-2-640 reserved.

23-2-641. Enforcement. (1) With respect to the sale of any new snowmobile that is subject to the provisions of 23-2-601 through 23-2-644, the attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by 23-2-601 through 23-2-644.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(i) of search, seizure, and arrest;

(ii) to investigate activities in this state regulated by this part and rules of the department and the fish, wildlife, and parks commission; and

(iii) to report violations to the county attorney of the county in which they occur.

(b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, authorized officers of the department, and the police of each municipality shall enforce the provisions of this part.

History: Ap. p. Sec. 11, Ch. 434, L. 1971; amd. Sec. 3, Ch. 91, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 15, Ch. 421, L. 1977; Sec. 53-1022, R.C.M. 1947; Ap. p. Sec. 5, Ch. 435, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 20, Ch. 421, L. 1977; Sec. 53-1028, R.C.M. 1947; R.C.M. 1947, 53-1022, 53-1028; amd. Sec. 7, Ch. 662, L. 1991; amd. Sec. 9, Ch. 351, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 351 deleted former first sentence of (1) that read: "The following persons may enforce the provisions of 23-2-601 through 23-2-644: the enforcement officers employed by the department, with respect to violations relating to wildlife or birds, discharging firearms, or sound level limitations"; in (2)(b), after "patrol", inserted "authorized officers of the department" and at end substituted "this part" for "23-2-601 through 23-2-644"; and made minor changes in style. Amendment effective April 16, 1993.

23-2-642. Penalties. (1) The failure to display a current decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year during the time provided in 23-2-601 through 23-2-644 is a misdemeanor, punishable by a fine in an amount equal to five times the applicable fee in lieu of tax payable under 23-2-615.1.

(2) A person who violates any other provision of 23-2-601 through 23-2-644 or a rule adopted pursuant to those sections shall pay a civil penalty of not less than $15 or more than $500 for each separate violation. If the violation is willful, the person shall pay a civil penalty of not less than $50 or more than $1,000 for each separate violation.

(3) A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by 23-2-601 through 23-2-644 is subject to the penalty provisions of subsection (2) if any machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, every sale of a new snowmobile that does not meet the sound level limitations imposed by 23-2-601 through 23-2-644 constitutes a separate violation.

History: (1)En. Sec. 4, Ch. 435, L. 1971; amd. Sec. 19, Ch. 421, L. 1977; Sec. 53-1027, R.C.M. 1947; (2) thru (4)En. Sec. 12, Ch. 434, L. 1971; amd. Sec. 4, Ch. 91, L. 1974; amd. Sec. 16, Ch. 421, L. 1977; Sec. 53-1023, R.C.M. 1947; R.C.M. 1947, 53-1023, 53-1027(1); amd. Sec. 29, Ch. 712, L. 1979; amd. Sec. 10, Ch. 351, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 351 at end of (1) substituted "in an amount equal to five times the applicable fee in lieu of tax payable under 23-2-615.1" for "of not less than $10 or more than $50"; at beginning of second sentence of (2) substituted "If the violation is willful, the person" for "A person who willfully violates any other provision of 23-2-601 through 23-2-644 or a rule adopted pursuant thereto"; in (3) substituted "subsection (2)" for "subsections (2) and (3)"; and made minor changes in style. Amendment effective April 16, 1993.

Cross-References

Fish and Wildlife Crimestoppers Act, Title 87, ch. 5, part 6.

23-2-643. Regulation by local government precluded. No political subdivision of this state may prescribe further licensing or registration of snowmobiles, and no political subdivision may levy fees or charges for use or operation of snowmobiles within the subdivision.

History: En. Sec. 5, Ch. 434, L. 1971; amd. Sec. 5, Ch. 421, L. 1977; R.C.M. 1947, 53-1016(2).

23-2-644. Use of funds from fines and forfeitures. All fines and forfeitures collected under 23-2-601 through 23-2-644 relating to snowmobiles, except those collected by a justice's court, shall be transmitted to the state treasurer, who shall deposit such fines and forfeitures in the state special revenue fund to the credit of the department to be used only for snowmobile safety and education.

History: En. Sec. 4, Ch. 435, L. 1971; amd. Sec. 19, Ch. 421, L. 1977; R.C.M. 1947, 53-1027(2); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 18, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

23-2-645 through 23-2-650 reserved.

23-2-651. Purpose. The legislature recognizes that there are inherent risks in the sport of snowmobiling that are essentially impossible for a snowmobile area operator to eliminate but that should be known by a reasonable and prudent snowmobiler. The purpose of 23-2-651 through 23-2-656 is to define those areas of responsibility and the acts for which a snowmobile area operator is liable for death or injury to any person or property and those risks for which a snowmobiler expressly assumes or must be considered to have voluntarily assumed the risk of death or injury and for which there can be no recovery.

History: En. Sec. 1, Ch. 440, L. 1987.

23-2-652. Definitions. As used in 23-2-651 through 23-2-656, the following definitions apply:

(1) "Snowmobile" means a vehicle defined in 23-2-601(10).

(2) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the operation of snowmobiles.

(3) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile trails and open areas or those persons providing rental snowmobile equipment. Operators may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

(4) "Snowmobiler" means any person operating or riding a snowmobile.

History: En. Sec. 2, Ch. 440, L. 1987.

23-2-653. Snowmobile area operators — duties — restriction on liability. (1) The person responsible for the maintenance of or operation of a snowmobile area shall mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the snowmobile area.

(2) A snowmobile area operator is liable for death or injury to a snowmobiler or other person or property only for an act or omission that constitutes gross negligence.

(3) Except as provided in this section, a snowmobile area operator has no duty to eliminate, alter, control, or lessen the risk inherent in the sport of snowmobiling. A snowmobile area operator who attempts to eliminate, alter, control, or lessen the risk inherent in the sport of snowmobiling is liable only for an act or omission that constitutes gross negligence.

History: En. Sec. 3, Ch. 440, L. 1987.

23-2-654. Snowmobiler's assumption of responsibility — duties. (1) A snowmobiler shall accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of snowmobiling and has the duty to regulate personal conduct at all times so that injury to self or other persons or property that results from the risks inherent in the sport of snowmobiling is avoided. The risks inherent in the sport of snowmobiling include variations in terrain, surface or subsurface snow or ice conditions, cornices, avalanches, poor visibility, bare spots, rocks, trees, other forms of forest growth or debris, and plainly marked trail maintenance equipment.

(2) A snowmobiler is responsible for:

(a) knowing the range of the snowmobiler's own ability to snowmobile any slope, trail, or area and for snowmobiling within the limits of the snowmobiler's ability considering the conditions;

(b) maintaining control of speed and course at all times while snowmobiling;

(c) heeding all posted warnings; and

(d) refraining from acting in a manner that may cause or contribute to the injury of anyone.

(3) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile.

History: En. Sec. 4, Ch. 440, L. 1987; amd. Sec. 11, Ch. 351, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 351 near beginning of first sentence of (1) substituted "shall accept" for "assumes the risk and", after "responsibility for" substituted "injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of snowmobiling and has the duty to regulate personal conduct at all times so that" for "death or", and at end inserted "is avoided" and at beginning of second sentence substituted "risks inherent in the sport of snowmobiling include" for "assumption of risk includes but is not limited to death or injury caused by the following"; and made minor changes in style. Amendment effective April 16, 1993.

23-2-655. Maintenance of rental snowmobiles. A person who engages in the business of renting snowmobiles to another shall:

(1) maintain rental snowmobiles in a safe condition; and

(2) offer each renter instructions in the mechanical operation of the rental snowmobile.

History: En. Sec. 5, Ch. 440, L. 1987.

23-2-656. Effect of comparative negligence. Notwithstanding any comparative negligence law in this state, a person is barred from recovery from a snowmobile area operator for death or injury to person or property resulting from any risk inherent in the sport of snowmobiling as described in 23-2-654.

History: En. Sec. 6, Ch. 440, L. 1987.

Part 7

Tramways — Ski Areas

23-2-701. Policy of state. In order to safeguard the life, health, property, and welfare of the citizens of Montana while using passenger tramways, as defined in 23-2-702, it shall be the policy of the state to protect its citizens and visitors from unnecessary mechanical hazards in the design, construction, and operation of passenger tramways but not from the hazards inherent in the sports of mountaineering, skiing, and hiking or from the hazards of the area utilized by the skier or other sportsman and that periodic inspections be required of passenger tramways with a view to assuring that each one of them meets the rules set forth by the board. The state, through the board, shall register all passenger tramways in the state, establish reasonable standards of design, construction, and operational practices, and cause to be made such inspections as may be necessary in carrying this policy into effect.

History: En. Sec. 1, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 19, Ch. 124, L. 1977; R.C.M. 1947, 69-6601; amd. Sec. 3, Ch. 483, L. 1989.

23-2-702. Definitions. As used in this part, the following definitions apply:

(1) "Area" means the area, terrain, or ski slopes served by a passenger tramway.

(2) "Board" means the board of passenger tramway safety provided for in 2-15-1896.

(3) "Industry" means the passenger tramway business activities of all those persons in the state who own, manage, or direct the operation of passenger tramways.

(4) "Operator" means a person, including any political subdivision or instrumentality thereof, who owns, manages, or directs the operation of a passenger tramway.

(5) "Passenger tramway" means a device used to transport passengers by means of any of the following:

(a) two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;

(b) multicar aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;

(c) skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable or similar devices;

(d) chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans or similar devices;

(e) a J-bar, T-bar, or platterpull, so-called, and similar types of devices or means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

(f) rope tow, a type of transportation which pulls the skier, riding on skis as the skier grasps the rope or wire rope manually, or similar devices.

History: **En. Sec. 2, Ch. 436, L. 1971; amd. Sec. 53, Ch. 511, L. 1973; R.C.M. 1947, 69-6602; amd. Sec. 1, Ch. 90, L. 1987; amd. Sec. 4, Ch. 483, L. 1989.**

23-2-703. Tramways not common carriers or public utilities. Passenger tramways shall not be construed to be common carriers or public utilities for the purposes of regulation within the meaning of the laws of the state of Montana.

History: **En. Sec. 15, Ch. 436, L. 1971; amd. Sec. 21, Ch. 124, L. 1977; R.C.M. 1947, 69-6615.**

23-2-704. Unlawful to endanger life or cause damage. (1) It shall be unlawful for any person riding or using a passenger tramway to do so in such manner as to endanger the life and safety of other persons or cause damage to passenger tramway equipment.

(2) Any person who violates this section shall be guilty of a misdemeanor.

History: **En. Secs. 16, 17, Ch. 436, L. 1971; R.C.M. 1947, 69-6616, 69-6617.**

Cross-References

Misdemeanor penalty when not otherwise specified, 46-18-212.

23-2-705. Liability limits. The board, individual board members, technical advisers appointed by the board, and any independent contractor with whom the board contracts must be provided all protections of governmental immunity granted to public employees by 2-9-305, including but not limited to the provision of legal defense, the payment of court costs, and the payment of judgments and settlements. These protections are provided only with regard to actions brought because of acts or omissions committed by such persons in the course of official tramway duties.

History: **En. Sec. 2, Ch. 483, L. 1989.**

23-2-706 through 23-2-710 reserved.

23-2-711. Registration of tramways required. No passenger tramway shall be operated in this state unless it has been and continues to be registered with the board, provided that the initial application for the registration of a passenger tramway shall permit the operator to operate such passenger tramway until final action on the application shall have been taken by the board. If an operator files an application with the board for the registration of a passenger tramway, which at that time is registered, then the operator may continue the operation of such passenger tramway under the existing registration until the board takes final action on the pending application and shall have:

(1) issued a certificate to the operator; or

(2) given written notice to the operator that the passenger tramway has not qualified for certification.

History: En. Sec. 5, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6605; amd. Sec. 5, Ch. 483, L. 1989.

23-2-712. Application for registration. Each year on or before October 1, every operator of a passenger tramway shall apply to the board, on forms prepared by it, for registration of the passenger tramways owned, operated, or managed by him. The application shall contain such information as the board may reasonably require in order for it to determine whether the passenger tramways sought to be registered comply with the intent of this part as specified in 23-2-701 and the rules promulgated by the board pursuant to 23-2-721.

History: En. Sec. 6, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6606; amd. Sec. 6, Ch. 483, L. 1989.

23-2-713. Issuance of certificates. (1) The board shall issue to the applying operator annual registration certificates for each passenger tramway owned, managed, or operated by such operator when it is satisfied:

(a) that the facts stated in the application are sufficient to enable the board to fulfill its duties under this part; and

(b) that each such passenger tramway sought to be registered complies with the rules of the board promulgated pursuant to 23-2-721.

(2) In order to satisfy itself that the conditions described in subsections (1)(a) and (1)(b) of this section have been fulfilled, the board may cause to be made such inspections described in 23-2-722 as it may reasonably deem necessary.

(3) When an operator installs a passenger tramway subsequent to October 1 of any year, such operator shall file a supplemental application for registration of such passenger tramway. Upon the receipt of such supplemental application, the board shall proceed immediately to initiate proceedings leading to the registration or rejection of registration of such passenger tramway pursuant to the provisions of this part.

(4) Each annual registration shall expire on September 30 of the year next following the year of issuance.

(5) Each operator shall cause the registration certificate for each passenger tramway registered to be displayed conspicuously at the place where passengers load.

History: En. Sec. 7, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6607; amd. Sec. 7, Ch. 483, L. 1989.

23-2-714. Fees. (1) The application for annual registration or supplemental application shall be accompanied by such annual fees as the board may by rule fix from year to year, not to exceed the following annual fees:

(a) passenger tramways described in subsections (5)(e) and (5)(f) of 23-2-702, $25 each;

(b) passenger tramways described in subsections (5)(c) and (5)(d) of 23-2-702, $50 each;

(c) passenger tramways described in subsections (5)(a) and (5)(b) of 23-2-702, $100 each.

(2) All fees collected by the board shall be deposited in the state special revenue fund.

History: (1)En. Sec. 8, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; Sec. 69-6608, R.C.M. 1947; (2)En. Sec. 9, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 2, Ch. 437, L. 1977; Sec. 69-6609, R.C.M. 1947; R.C.M. 1947, 69-6608, 69-6609; amd. Sec. 1, Ch. 188, L. 1985; amd. Sec. 8, Ch. 483, L. 1989.

23-2-715. Assessment on passenger tramway receipts. (1) The board is hereby authorized to impose an assessment of up to 1/4 of 1% on the gross receipts of all passenger tramways operated in the state of Montana. A minimum of $100 shall be collected annually from the owner of a passenger tramway facility. The assessment shall be calculated upon gross receipts received during the period July 1 of any year through June 30 of the following year. The assessments shall be collected by the department of commerce and remitted to the state special revenue fund by December 31 of each year.

(2) All proceeds of the gross receipts assessment and the fees collected under 23-2-714 shall be used only to support the duties of the board set forth in this part.

History: En. 69-6608.1 by Sec. 1, Ch. 437, L. 1977; R.C.M. 1947, 69-6608.1; amd. Sec. 2, Ch. 188, L. 1985; amd. Sec. 2, Ch. 90, L. 1987; amd. Sec. 9, Ch. 483, L. 1989; amd. Sec. 1, Ch. 34, L. 1991.

23-2-716. Penalty and interest for delinquency — waiver. (1) Assessments due under this chapter are delinquent if not paid on or before December 31. The department of commerce shall add to the amount of each delinquent assessment a penalty of 10% of the amount of the assessment plus interest at the rate of 1% per month or fraction of a month, computed on the total amount of assessment. Interest is computed from the date the assessment was due to the date of payment.

(2) The 10% penalty may be waived by the department of commerce if reasonable cause is established for the failure or neglect to file the return required by 23-2-715 or to pay the assessment due to the department of commerce.

History: En. Sec. 10, Ch. 676, L. 1991; amd. Sec. 41, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 in (1), in second sentence, and in (2), in two places, substituted "department of commerce" for "department of revenue"; and made minor changes in style.

23-2-717. Credit for overpayment — interest on overpayment. (1) If the department of commerce determines that the amount of the assessment, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any assessment, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's successor through reorganization, merger, or consolidation, or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is provided in 23-2-716(2) from the due date of the return or from the date of overpayment, whichever is later, to the date the department of commerce approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the

taxpayer to furnish information requested by the department of commerce for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

History: En. Sec. 13, Ch. 676, L. 1991; amd. Sec. 42, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 throughout section substituted "department of commerce" for "department of revenue"; and in (2) substituted "rate as is provided in 23-2-716(2)" for "rate as is charged on deficiency assessments provided in 23-2-715(2)".

23-2-718. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a statement of gross receipts is filed unless the notice of the proposed additional assessment is mailed within 5 years from the date the statement of gross receipts was filed. For purposes of this section, a statement of gross receipts filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment, consents in writing to an extended time, the assessment may be made at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a statement of gross receipts is filed after 5 years from the last day prescribed for filing the statement of gross receipts or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the department of commerce determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of commerce may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a statement of gross receipts is required to be filed and the taxpayer fails to file the statement of gross receipts, the tax may be assessed or an action to collect the tax may be brought at any time. If a statement of gross receipts is required to be filed and the taxpayer files a fraudulent statement of gross receipts, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of commerce.

History: En. Sec. 14, Ch. 676, L. 1991; amd. Sec. 43, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 in (2), in two places, and at end of (3) substituted "department of commerce" for "department of revenue".

23-2-719 and 23-2-720 reserved.

23-2-721. Additional powers and duties of board. In addition to all other powers and duties conferred and imposed upon the board by this part, the board shall:

(1) adopt reasonable rules relating to public safety in the design, construction, and operation of passenger tramways but which may not relate or pertain to an area served by a passenger tramway. In adopting such rules the board shall:

(a) use as a guideline the standards contained in "The American National Standards for Passenger Tramways—Aerial Tramways and Lifts, Surface Lifts, and Tows—Safety Requirements", ANSI B 77.1—1982, as amended from time to time, or equivalent and as amended or supplemented from time to time by the board;

(b) hold hearings and take in all evidence relating to the adoption of rules;

(c) supply to each operator a copy of its rules and each amendment thereto or revision thereof;

(d) avoid discrimination in application of the rules to operators of passenger tramways;

(2) The board may:

(a) hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to any inquiry;

(b) approve, deny, revoke, and renew the registrations provided for in this part;

(c) cause the prosecution and enjoinder of all persons violating the provisions of this part and incur the necessary expenses thereof;

(d) prescribe the duties of such personnel as the board considers necessary.

History: En. Sec. 10, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 20, Ch. 124, L. 1977; R.C.M. 1947, 69-6610; amd. Sec. 10, Ch. 483, L. 1989.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

23-2-722. Inspection of tramways. The board may cause to be made such inspection of the design, construction, operation, and maintenance of passenger tramways as the board may reasonably require. The board may employ qualified engineers to make such inspections for reasonable fees plus expenses. If, as the result of an inspection, it is found that a violation of the board's rules exists or a condition in passenger tramway design, construction, operation, or maintenance exists endangering the safety of the public, an immediate report shall be made to the operator whose passenger tramway has received such inspection and to the board for appropriate investigation and order.

History: En. Sec. 11, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6611; amd. Sec. 11, Ch. 483, L. 1989.

Cross-References

Licensing of engineers, Title 37, ch. 67.

23-2-723. Order for corrective action and compliance. If, after investigation, the board finds that a violation of this part or any of its rules exists or that there is a condition in passenger tramway design, construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings and the corrective action to be taken and fixing a reasonable time for compliance therewith. Such order shall be served upon the operator involved in such violation personally or by certified mail.

History: En. Sec. 12, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6612; amd. Sec. 12, Ch. 483, L. 1989.

Cross-References

Proof of service of process, Rules 4D(8) and 5(f), M.R.Civ.P. (see Title 25, ch. 20).

23-2-724. Remedies to enforce compliance. If any operator fails to comply with a legal order or rule of the board, the board, at its election, may:

(1) suspend the registration of the affected passenger tramway until the operator complies therewith; or

(2) bring injunctive proceedings in the district court of the judicial district in which the affected passenger tramway is located to compel compliance therewith. In such proceedings the board shall not be required to post bond.

History: En. Sec. 13, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6613; amd. Sec. 13, Ch. 483, L. 1989.

Cross-References

Injunctions, Title 27, ch. 19.

23-2-725. Judicial review. Any order of the board adverse to an operator may be appealed by the operator to the district court of the district wherein is located his passenger tramway which is the subject of such order, and said district court shall conduct a proceeding, de novo, and the decision of the district court shall be subject to appeal to the supreme court of Montana, as in civil cases.

History: En. Sec. 14, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6614; amd. Sec. 14, Ch. 483, L. 1989.

Cross-References

Judicial review of contested cases of administrative agency action, Title 2, ch. 4, part 7.

23-2-726 through 23-2-730 reserved.

23-2-731. Purpose. The legislature finds that skiing is a major recreational sport and a major industry in the state and recognizes that among the attractions of the sport are risks, inherent and otherwise. The state has a legitimate interest in maintaining the economic viability of the ski industry by discouraging claims based on damages resulting from risks inherent in the sport, defining inherent risks, and establishing the duties of skiers and ski area operators.

History: En. Sec. 1, Ch. 509, L. 1979; amd. Sec. 1, Ch. 429, L. 1989.

Cross-References

Liability for negligence and intentional torts, Title 27, ch. 1, part 7.

23-2-732. Definitions. As used in 23-2-731 through 23-2-736, the following definitions apply:

(1) "Ski area operator" or "operator" means a person, firm, or corporation, and its agents and employees, having operational and administrative responsibility for ski trails and improvements.

(2) "Skier" means any person admitted to a ski area or using the ski trails, areas, and other improvements within the ski area. The term does not include a person using an aerial passenger tramway.

(3) "Ski trails" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing.

History: En. Sec. 2, Ch. 509, L. 1979; amd. Sec. 2, Ch. 429, L. 1989.

23-2-733. Duties of operator regarding ski areas. Consistent with the duty of reasonable care owed by a ski area operator to a skier, a ski area operator shall:

(1) mark all trail grooming vehicles by furnishing the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(2) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski trails;

(3) maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and the relative degree of difficulty of the ski trails at that area;

(4) post a notice requiring the use of ski-retention devices;

(5) designate at the start of each day, by trail board or otherwise, which trails are open or closed and amend those designations as openings and closures occur during the day;

(6) post in a conspicuous location the skier responsibility code that is published by the national ski areas association and that is current on April 4, 1989; and

(7) post a copy of 23-2-736 in a conspicuous location.

History: En. Sec. 3, Ch. 509, L. 1979; amd. Sec. 3, Ch. 429, L. 1989.

23-2-734. Duties of operator with respect to passenger tramways. A ski area operator shall construct, operate, maintain, and repair any passenger tramway in accordance with the rules of the board. However, nothing in this section relieves an operator from the duty of taking whatever other actions are necessary to properly construct, operate, maintain, and repair a passenger tramway.

History: En. Sec. 4, Ch. 509, L. 1979; amd. Sec. 3, Ch. 90, L. 1987; amd. Sec. 15, Ch. 483, L. 1989.

23-2-735. Duties of passenger. No passenger may:

(1) board or disembark from a passenger tramway except at an area designated for such purposes;

(2) throw or expel any object from a passenger tramway;

(3) commit an act that interferes with the running or operation of a passenger tramway;

(4) use a passenger tramway unless the passenger has the ability to use it safely without any instruction on its use by the operator or requests and receives instruction before boarding;

(5) embark on a passenger tramway without the authority of the operator.

History: En. Sec. 5, Ch. 509, L. 1979.

23-2-736. Skier's conduct — inherent risks. (1) A skier has the duty to conduct himself at all times so that he avoids injury to himself and others and to be aware of the inherent risks of the sport.

(2) A skier:

(a) must know the range of his ability and safely conduct himself within the limits of that ability and his equipment so as to negotiate any section of terrain or ski trail safely and without injury or damage. A skier must know that his ability may vary because of trail changes caused by weather, grooming changes, or skier use.

(b) shall maintain control of speed and course so as to prevent injury to himself or others;

(c) must abide by the requirements of the skier responsibility code that is published by the national ski areas association and that is current on April 4, 1989; and

(d) shall obey all posted or other warnings and instructions of the ski area operator.

(3) A person may not:

(a) place an object in the ski area or on the uphill track of a passenger tramway that may cause a passenger or skier to fall;

(b) cross the track of a passenger tramway except at a designated and approved point; or

(c) if involved in a skiing accident, depart from the scene of the accident without:

(i) leaving personal identification; or

(ii) notifying the proper authorities and obtaining assistance when he knows that a person involved in the accident is in need of medical or other assistance.

(4) A skier must accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of skiing. Risks inherent in the sport of skiing are:

(a) variations in skiing terrain, including surface and subsurface snow or ice conditions naturally occurring or resulting from weather changes, skier use, or grooming or snowmaking operations;

(b) bare spots and thin snow cover caused by limited snowfall, melting, wind erosion, skier action, grooming, or unconsolidated base;

(c) forest growth on designated trails;

(d) skiing in an area not designated as a ski trail;

(e) clearly visible or plainly marked improvements or equipment;

(f) clearly visible or plainly marked mobile equipment and attachments, whether moving or stationary, used by the ski area operator; and

(g) avalanches, except on open, designated ski trails.

History: En. Sec. 6, Ch. 509, L. 1979; amd. Sec. 4, Ch. 429, L. 1989.

Cross-References

Pleading assumption of risk, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).

Comparative negligence, 27-1-702.

23-2-737. Repealed. Sec. 5, Ch. 429, L. 1989.

History: En. Sec. 7, Ch. 509, L. 1979.

Part 8

Off-Highway Vehicles

23-2-801. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Certificate of ownership" means a document issued by the department of justice as prima facie evidence of ownership as provided in 23-2-811.

(2) (a) "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) Off-highway vehicle does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) except as provided in 23-2-804, vehicles otherwise licensed under the laws of the state.

History: En. Sec. 1, Ch. 578, L. 1987; amd. Sec. 1, Ch. 599, L. 1989.

23-2-802. Exemptions. The provisions of this part do not apply to:

(1) an off-highway vehicle:

(a) owned or used by the United States or another state or an agency or political subdivision thereof;

(b) registered in a country other than the United States, temporarily used within this state for not more than 30 days; or

(c) registered in another state of the United States, temporarily used within this state for not more than 30 days; or

(2) a licensed motorcycle or licensed quadricycle used for fishing and hiking access, camping, or picnicking on a visible two-track trail or road within 1 mile of a designated road.

History: En. Sec. 2, Ch. 578, L. 1987; amd. Sec. 1, Ch. 423, L. 1991.

Cross-References

Operation of motor vehicle or off-highway vehicle below high-water mark on certain state or federal lands prohibited — exceptions, 61-8-371.

23-2-803. Fee in lieu of tax on off-highway vehicles — exception — disposition of fees. (1) There is a fee in lieu of tax on off-highway vehicles, other than off-highway vehicles constituting the inventory of a dealership licensed under 23-2-818, to be paid to the county treasurer of the county in which the owner of the off-highway vehicle resides.

(a) The fee for an off-highway vehicle less than 3 years old is $19. In all other cases the fee is $9.

(b) The age of an off-highway vehicle is determined by subtracting the manufacturer's designated model year from the current calendar year.

(2) (a) Except as provided in subsection (2)(b), the county treasurer shall distribute all fees in lieu of tax collected on off-highway vehicles pursuant to this section in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(b) The county treasurer shall remit $1 of the fee in lieu of tax collected on an off-highway vehicle to the department of agriculture for deposit in the noxious weed management trust fund provided for in 80-7-811.

History: En. Sec. 3, Ch. 578, L. 1987; amd. Secs. 1, 3, Ch. 433, L. 1989; amd. Sec. 5, Ch. 599, L. 1989.

Cross-References

Noxious weed management trust fund, 80-7-811.

23-2-804. Decal required — fee — disposition. (1) Except as provided in 23-2-802, an off-highway vehicle may not be operated by any person for off-road recreation on public lands in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department of justice and issued by the county treasurer, as visual proof that the following fees have been paid for the current year:

(a) (i) the fee in lieu of tax provided for in 23-2-803; and

(ii) the registration fee provided for in 23-2-817; or

(b) when the vehicle will be used as provided in this section, the registration and taxation fees for motorcycles and quadricycles subject to licensure under 61-3-321, as evidenced by presentation of an owner's certificate of registration and payment receipt; and

(c) the off-highway decal fee provided for in this section.

(2) The decal will be serially numbered and have the expiration date of December 31 of the appropriate year printed thereon.

(3) The off-highway decal fee is $5, which the county treasurer shall collect and transmit to the state treasurer, who shall deposit the money in an interest-bearing account in the state special revenue fund to the credit of the department of fish, wildlife, and parks. The decal fee and the interest and income to the account must be spent as follows:

(a) 40% must be used to enforce the provisions of this section; and

(b) 60% must be spent to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreation use except that:

(i) no money may be spent for this purpose before January 1, 1991; and

(ii) evaluation for development of a program plan must begin January 1, 1991.

History: En. Sec. 4, Ch. 578, L. 1987; amd. Secs. 7, 16, Ch. 599, L. 1989; amd. Sec. 2, Ch. 423, L. 1991.

23-2-805. Repealed. Sec. 13, Ch. 599, L. 1989.

History: En. Sec. 5, Ch. 578, L. 1987.

23-2-806. Enforcement. (1) The department of fish, wildlife, and parks enforcement personnel, park rangers, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this part.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department and the fish, wildlife, and parks commission; and

(c) to report violations to the county attorney of the county in which they occur.

(3) Park rangers may not carry firearms in the execution of their duties.

History: En. Sec. 6, Ch. 578, L. 1987; amd. Sec. 9, Ch. 599, L. 1989; amd. Sec. 8, Ch. 662, L. 1991.

23-2-807. Penalty — disposition. (1) The failure to display a current decal indicating that the fee in lieu of tax, registration fees, decal fees, and, when applicable, taxes on licensed vehicles have been paid on the off-highway vehicle for the current year as provided in 23-2-804 is a misdemeanor punishable by a fine of $50.

(2) All fines collected under this section must be transmitted to the state treasurer, who shall deposit the money in the account created under 23-2-804(3). Fifty percent of this money and the interest earned on it must be used for off-highway vehicle safety and education. The remaining 50% of the money and the interest earned on it must be used for enforcement.

History: En. Sec. 7, Ch. 578, L. 1987; amd. Sec. 35, Ch. 83, L. 1989; amd. Sec. 10, Ch. 599, L. 1989.

23-2-808. Regulation by local government precluded. No political subdivision may prescribe further licensing or registration of off-highway vehicles, and no political subdivision may levy fees or charges for use or operation of off-highway vehicles within the subdivision.

History: En. Sec. 9, Ch. 578, L. 1987.

23-2-809. Duplicate decal. If a decal required in 23-2-804 indicating that the off-highway vehicle fee has been paid for the current year is lost, mutilated, or becomes illegible, the person to whom it was issued shall immediately apply for and obtain a duplicate decal upon payment of a fee of $5 to the county treasurer, who shall distribute the fee as provided in 23-2-804(3).

History: En. Sec. 8, Ch. 599, L. 1989.

23-2-810. Mail renewal and recertification. The mail renewal procedure developed by the department of justice pursuant to 61-3-535 may be used for mail recertification of off-highway vehicles, the renewal of license decals, and the payment of the fee in lieu of tax.

History: En. Sec. 11, Ch. 604, L. 1991.

23-2-811. Certificate of ownership — procedure — fee — filing security interest. (1) An off-highway vehicle may not be operated upon any public lands, trails, easements, lakes, rivers, or streams unless a certificate of ownership has first been obtained from the department of justice.

(2) The owner of an off-highway vehicle shall apply for a certificate of ownership to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The form must include:

(a) the name of the owner;
(b) the residence of the owner, by town and county;
(c) the business address or home mailing address of the owner;
(d) the name and address of any lienholder;
(e) the amount due under any contract, mortgage, or lien;
(f) the name of the manufacturer;

(g) the model number or name;

(h) the identification number; and

(i) the name and address of the dealer or other person from whom the off-highway vehicle was acquired.

(3) The application must be signed by at least one owner or by a properly authorized agent of the owner.

(4) The application for a new certificate of ownership must be accompanied by the immediately previous certificate. This subsection does not apply to off-highway vehicles that are purchased as new and unused machines or that were operated before January 1, 1990.

(5) (a) After the owner completes the application form, the county treasurer shall issue to the applicant two copies of the completed application, with one marked "file copy", and shall forward one copy and the original application to the department of justice. The department of justice shall enter the information contained in the application upon the corresponding records of its office and shall send the applicant a certificate of ownership containing a permanent ownership number and information from the application considered necessary by the department of justice.

(b) The certificate of ownership is not required to be renewed annually and is valid as long as the person holding it owns the off-highway vehicle.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, of which:

(a) $3.50 must be forwarded to the department of justice for deposit in the general fund; and

(b) $1.50 must be retained by the county treasurer for the cost of administering this section.

(8) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the encumbered off-highway vehicle. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, a complete description of the off-highway vehicle, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the off-highway vehicle encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate. However, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the vehicle is to be

registered. The owner of an off-highway vehicle is the person entitled to operate and possess the vehicle.

(9) A security interest in an off-highway vehicle held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9.

(10) Whenever a security interest or lien is filed against an off-highway vehicle that is subject to two or more security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "Notice. This off-highway vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(11) Satisfaction or statements of release filed with the department of justice under this section must be retained for a period of 8 years from the date of receipt, after which they may be destroyed.

(12) Except as provided in subsection (13), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(13) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(14) Upon default under a chattel mortgage or conditional sales contract covering an off-highway vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In the case of attachment of an off-highway vehicle, the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(15) A conditional sales vendor, chattel mortgagee, or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sale contract within 15 days after receiving final payment shall pay to the department of justice the sum of $1 for each day after the expiration of the 15-day period that the person fails to file the satisfaction.

(16) Upon receipt of notice of any involuntary liens or attachments against the record of an off-highway vehicle in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice of the lien, showing the date of execution of the lien and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(17) It is not necessary to refile with the department of justice instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(18) A fee of $4 must be paid to the department of justice to file a security interest or other lien against an off-highway vehicle. The $4 fee includes and covers the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504.

History: En. Sec. 2, Ch. 599, L. 1989; amd. Sec. 14, Ch. 398, L. 1989; amd. Sec. 4, Ch. 463, L. 1991; amd. Sec. 3, Ch. 482, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 482 at beginning of (8) deleted a sentence that provided that a security interest in an off-highway vehicle is not valid against subsequent purchasers or encumbrancers unless a lien notice has been perfected as provided in this section and filed on a form approved by the Department of Justice, in first sentence, before "security", inserted "voluntary" and before "lien" deleted "other", near beginning of second sentence, before "lien", inserted "approved", in fourth sentence substituted "voluntary security interests and liens" for "security interest or lien", and inserted fifth sentence requiring involuntary liens to be filed against the record of the encumbered off-highway vehicle; in (9), after "9", deleted "and no endorsement on the certificate of title is necessary for perfection"; at beginning of (12) inserted exception clause and near beginning substituted "voluntary security interest or lien" for "security interest or other lien is perfected as provided in this section"; inserted (13) providing that voluntary security interests or lien filings not requiring ownership transfer are perfected on date Department of Justice receives lien notice and certificate of ownership, requiring Department to issue secured party receipt evidencing perfection, and providing that perfection constitutes constructive notice to subsequent purchasers or encumbrancers from date lien notice is delivered to Department; near beginning of (16) substituted "notice of any involuntary liens" for "liens, notice of liens dependent on possession"; and made minor changes in style.

23-2-812. Transfer of interest. (1) To transfer a certificate of ownership for an off-highway vehicle registered under 23-2-817, the person whose title or interest is to be transferred shall endorse the certificate of ownership in the appropriate space on the reverse side of the certificate and have the signature acknowledged before a notary public.

(2) (a) Within 20 calendar days after the date of notarization, the transferee shall apply to the county treasurer of the county in which the transferee resides for:

(i) transfer of the endorsed certificate of ownership;

(ii) registration of the off-highway vehicle; and

(iii) issuance of a decal as required by 23-2-804.

(b) The county treasurer shall forward the application and the original certificate of ownership to the department of justice, which shall file the application upon receipt.

(c) A certificate of ownership may not be issued by the department until the outstanding certificates are surrendered to that office or their loss is established.

(d) The county treasurer shall collect a fee of $5 for each application for transfer of ownership, of which:

(i) $3.50 must be forwarded to the department of justice for deposit in the general fund; and

(ii) $1.50 must be retained by the county treasurer for the cost of administering this section.

(3) To effect by operation of law a transfer of interest in an off-highway vehicle, the provisions of 61-3-201(3) are applicable.

(4) (a) A person who purchases a new or used off-highway vehicle from an off-highway vehicle dealer licensed under 23-2-818 shall, within 20 calendar days after the purchase date, apply to the county treasurer of the county in which the person resides for:

(i) a certificate of ownership;

(ii) registration of the off-highway vehicle; and

(iii) a decal as required by 23-2-804.

(b) During this period the sticker provided for in subsection (6) must remain affixed to the off-highway vehicle.

(5) It is not a violation of this part for a purchaser to operate a newly acquired off-highway vehicle without a certificate of ownership, a certificate of registration, and a decal during the first 20 days of ownership.

(6) Prior to the delivery of the off-highway vehicle to the purchaser, the dealer shall issue and affix to the off-highway vehicle a sticker, in a form to be prescribed by the department of justice, containing the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the off-highway vehicle, including its identification number. The dealer shall keep a copy of the sticker for the dealer's records and shall send a copy of the sticker to the department of justice.

(7) The provisions of subsection (2) do not apply to the transfer of an off-highway vehicle to an off-highway vehicle dealer licensed under 23-2-818 who intends to resell the vehicle and who operates it only for demonstration purposes. Every dealer, upon a transfer of interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership showing the name of the lienholder and the amount due under the contract, mortgage, or lien as required by 23-2-811(2)(d) and (2)(e).

History: En. Sec. 3, Ch. 599, L. 1989; amd. Sec. 14, Ch. 398, L. 1989; amd. Sec. 4, Ch. 482, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 482 in (2)(d) increased fee from $4 to $5; in (2)(d)(i) increased amount forwarded from $3 to $3.50; in (2)(d)(ii) increased amount retained from $1 to $1.50; and made minor changes in style. Amendment effective January 1, 1994.

23-2-813. Lost or mutilated certificate. If a certificate of ownership is lost or mutilated or becomes illegible, the person to whom it was issued shall immediately apply for and obtain a duplicate certificate upon payment of a fee of $4 to the department of justice.

History: En. Sec. 4, Ch. 599, L. 1989.

23-2-814. Nonresident temporary-use permits — use of fees. (1) An off-highway vehicle that is owned by a nonresident and that is not registered in another state of the United States or in another country may not be operated by a person in Montana unless a nonresident temporary-use permit is obtained.

(2) The requirements pertaining to a nonresident temporary-use permit for an off-highway vehicle are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department of fish, wildlife, and parks. The forms must include but are not limited to:

(i) the applicant's name and permanent address;

(ii) the make, model, year, and serial number of the off-highway vehicle; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $5, a nonresident off-highway vehicle temporary-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the off-highway vehicle. The sticker is the temporary-use permit.

(3) The temporary-use permit is valid for the calendar year designated on the permit.

(4) The permit is not proof of ownership, and a certificate of ownership may not be issued.

(5) All money collected by payment of fees under this section must be transmitted to the state treasurer, who shall deposit the money in the account created under 23-2-804(3). The money collected by payment of fees under this section must be spent as follows:

(a) 40% to be used in administering this section; and

(b) 60% to be used to plan, develop, and implement a comprehensive program for appropriate off-highway vehicle recreation use.

(6) Failure to display the permit as required by this section or making false statements in obtaining the permit is a misdemeanor and is punishable by a fine of not less than $25 or more than $100. All fines collected under this section must be transmitted to the state treasurer, who shall deposit the money in the account created under 23-2-804(3). Fifty percent of this money and the interest earned on it must be used for off-highway vehicle safety and education. The remaining 50% of the money and the interest earned on it must be used for enforcement.

History: En. Sec. 1, Ch. 247, L. 1993.

23-2-815 and 23-2-816 reserved.

23-2-817. Registration fee — application and issuance — disposition. (1) Each off-highway vehicle is subject to an annual registration fee of $2.

(2) The county treasurer shall collect the annual fee when the fee in lieu of tax is collected.

(3) Application for registration must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The application must contain:

(a) the name and home mailing address of the owner;
(b) the certificate of ownership number;
(c) the name of the manufacturer of the off-highway vehicle;
(d) the model number or name;
(e) the year of manufacture;
(f) a statement evidencing payment of the fee in lieu of property tax; and
(g) such other information as the department of justice may require.

(4) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt, which must contain the information considered necessary by the department of justice and a listing of the fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(5) All registration fees collected must be forwarded to the department of justice and deposited in the general fund.

History: En. Sec. 6, Ch. 599, L. 1989; amd Sec. 14, Ch. 398, L. 1989.

23-2-818. Dealer registration certificate — use of fees. (1) Unless the dealer is licensed under the provisions of 61-4-101, a dealer may not sell off-highway vehicles unless he has first obtained a dealer registration certificate from the department of justice under the provisions of this section.

(2) The dealer application for registration or renewal of registration must be accompanied by an application or renewal fee of $5 and a registration fee of $5. To qualify for the fees in this subsection, the applicant for renewal shall certify that he has sold three or more off-highway vehicles during the preceding year. Upon receipt of the dealer application or renewal and payment of fees, the dealer must be issued two dealer off-highway identification cards to be carried by the dealer or the dealer's customer when demonstrating the dealer's off-highway vehicles. Additional dealer off-highway vehicle identification cards may be purchased by the dealer from the department of justice for a fee of $2 each.

(3) No bond is required of the dealer.

(4) The dealer shall have a principal place of business where he maintains all his business records and where he displays and sells merchandise.

(5) An applicant for renewal of an off-highway vehicle dealer registration who does not qualify under subsection (2) shall:

(a) pay an additional $50 renewal registration fee; and
(b) provide a copy of a new off-highway vehicle franchise or sales agreement that he has with a manufacturer, importer, or distributor.

(6) Dealer registration certificates and identification cards expire on December 31 following the date of issuance.

(7) (a) The dealer application fees and all interest accruing from use of this money must be deposited in the general fund to be used by the department of justice for the administration of this part.

(b) All dealer registration fees and renewal fees collected must be deposited in the account provided in 23-2-804(3). This money and the interest earned on it must be used for off-highway vehicle safety and education programs.

History: En. Sec. 12, Ch. 599, L. 1989; amd. Sec. 14, Ch. 398, L. 1989.

23-2-819 and 23-2-820 reserved.

23-2-821. Off-highway crossings of public roads. (1) Except as provided in subsection (2), an off-highway vehicle may make a direct crossing of a public road when the crossing is necessary to get to another authorized area of operation. The crossing must be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The off-highway vehicle must make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(2) An off-highway vehicle may not be operated on or across a highway that is part of the federal-aid interstate system.

History: En. Sec. 1, Ch. 578, L. 1993.

23-2-822. Off-highway vehicle operator responsibilities. (1) An off-highway vehicle operator shall accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of off-highway vehicle use and shall regulate personal conduct at all times so that injury to self or other persons or property that results from the risks inherent in the sport of off-highway vehicle operation is avoided.

(2) Risks inherent in the sport of off-highway operation include variations in terrain, surface or subsurface conditions, crevices, ravines, streams, poor visibility, rocks, trees, other forms of forest growth or debris, and any other natural hazard.

(3) An off-highway vehicle operator is responsible for:

(a) knowing the range of the operator's ability to navigate any slope, trail, or area for off-highway vehicle use within the limits of the operator's ability, taking into consideration the conditions;

(b) maintaining control of speed and course at all times while operating the off-highway vehicle;

(c) heeding all posted warnings; and

(d) refraining from acting in a manner that may cause or contribute to the injury of anyone.

(4) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of off-highway equipment or products or safety equipment used incidental to the operation of an off-highway vehicle.

History: En. Sec. 2, Ch. 578, L. 1993.

23-2-823. Off-highway vehicle safety education training program — appropriation. (1) There is an off-highway vehicle safety education training program. Beginning October 1, 1994, the department of fish, wildlife, and parks shall coordinate the program as funds are available.

(2) Beginning October 1, 1994, the department of justice shall transfer to the department of fish, wildlife, and parks all money available for the program under 23 U.S.C. 402.

(3) There is an account in the federal special revenue fund in which all money received for the administration of the off-highway vehicle safety education training program must be deposited. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of fish, wildlife, and parks for the administration of the program.

History: **En. Sec. 3, Ch. 578, L. 1993.**

Compiler's Comments

Contingent Voidness: Section 6, Ch. 578, L. 1993, provided that if on July 1, 1995, funding is not available for the training program provided by this section, then this section is void.

Part 9

Cave Conservation Act

23-2-901. Short title. This part may be cited as "The Montana Cave Conservation Act".

History: **En. Sec. 1, Ch. 264, L. 1993.**

23-2-902. Definitions. As used in this part, the following definitions apply:

(1) "Cave" means any geologically formed void or cavity beneath the surface of the earth or within a cliff or ledge, including but not limited to natural subsurface water and drainage systems, whether or not a natural entrance is present. The term does not include a mine, tunnel, aqueduct, or human-made excavation but does include any natural structure that is commonly known as a cavern, sinkhole, pit, grotto, or rock shelter and that communicates with a subterranean passage or drainage system.

(2) "Cave life" means any life form that occurs in, uses, visits, or inhabits a cave.

(3) "Gate" means a structure or device located to limit or prohibit access or entry to a cave.

(4) "Material" means all or part of any archaeological, cultural, paleontological, biological, or historical item or artifact found in a cave, including but not limited to any petroglyph, pictograph, pottery, basketwork, fossil, human remains, or animal remains.

(5) "Owner" means any person or public or private agency that has the right to possession of a cave.

(6) "Person" means an individual, partnership, firm, association, trust, corporation, or other legal entity.

(7) "Speleogen" means the surrounding natural earth or bedrock in which a cave is formed, including but not limited to clastic sediments, walls, floors, ceiling, and other related structural and geological features.

(8) "Speleothem" means a natural mineral formation or deposit occurring in a cave, including but not limited to formations known as stalagmite, stalactite, helectite, shield, anthodite, gypsum flower and needle, angel's hair,

soda straw, drapery, bacon, cave pearl, popcorn, rimstone dam, column, palette, and flowstone. A speleothem is commonly composed of calcite, gypsum, epsomite, aragonite, celestite, or other similar mineral.

History: En. Sec. 2, Ch. 264, L. 1993.

23-2-903. Vandalism of cave unlawful. (1) Except as provided in subsection (2), a person may not purposely or knowingly:

(a) carve, write, mark upon, break, crack, burn, or remove or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or material found in a cave, whether attached or broken, including speleothems, speleogens, and sedimentary deposits;

(b) break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to a cave;

(c) remove, deface, or tamper with a sign stating that a cave is posted or citing provisions of this part; or

(d) disturb or alter in any way the natural condition of a cave.

(2) The provisions of subsection (1) do not apply to a cave owner or the owner's authorized agent, officer, employee, or designated representative who undertakes work to improve or control physical access to the cave.

History: En. Sec. 3, Ch. 264, L. 1993.

23-2-904. Disturbance of cave life unlawful. A person may not purposely or knowingly remove, kill, harm, or otherwise interfere with cave life, except for health or safety reasons or when the act is a minimal disturbance or for removal of organisms for recognized scientific inquiry. Gates at the entrance or at any point within a cave must be of open construction to allow unimpeded passage of air, insects, bats, and other cave life.

History: En. Sec. 4, Ch. 264, L. 1993.

23-2-905. Pollution of and burning harmful substances in cave unlawful. (1) A person may not purposely or knowingly store, dump, litter, dispose of, or otherwise place in a cave any refuse, garbage, dead animal, sewage, or toxic substance harmful to cave life or human life.

(2) A person may not burn in a cave any substance that produces smoke or gas that is or may be harmful to cave life. The use of a carbide lamp that produces acetylene gas is permitted.

History: En. Sec. 5, Ch. 264, L. 1993.

23-2-906. Sale of speleothems and speleogens unlawful. A person may not sell, offer for sale, or export for sale any speleothem or speleogen.

History: En. Sec. 6, Ch. 264, L. 1993.

23-2-907. Conditions of owner liability. The liability of the owner of a cave or the owner's authorized agent, officer, employee, or designated representative acting within the scope of authority is restricted pursuant to 70-16-302.

History: En. Sec. 7, Ch. 264, L. 1993.

23-2-908. Penalty. A person convicted of violating any provision of this part is subject to a fine of not less than $500 or more than $2,000, imprisonment in the county jail for not more than 60 days, or both.

History: En. Sec. 9, Ch. 264, L. 1993.

CHAPTER 3

ATHLETICS

BOXING AND WRESTLING

Part 1 — State Board of Athletics (Repealed. Sec. 1, Ch. 322, L. 1981)

Part 2 — Boxing, Sparring, and Wrestling Matches (Repealed. Sec. 1, Ch. 322, L. 1981)

Part 3 — General

23-3-301. Definitions.

Part 4 — Board of Athletics

23-3-401. Board organization — compensation — meetings — department to keep records.
23-3-402. Enforcement of rules by board member — board designees.
23-3-403. Board member conflict of interest.
23-3-404. Board jurisdiction — license required — contestant participation.
23-3-405. Rules.

Part 5 — Licenses

23-3-501. Licenses — fees.
23-3-502. Bond — conditions.

Part 6 — Reporting Requirements Penalties

23-3-601. Report of ticket sales — tax on gross receipts — disposition of money received.
23-3-602. Examination of books and records on failure to make report or on unsatisfactory report — penalty for failure to pay tax.
23-3-603. Discipline.
23-3-604 through 23-3-610 reserved.
23-3-611. Violation as misdemeanor.

Chapter Cross-References

Power of cities — license, tax, and regulate sporting activities, 7-21-4201.

Bribery in sporting contests, 45-8-214.

Part 1

State Board of Athletics (Repealed. Sec. 1, Ch. 322, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

23-3-101. En. 82-301.1 by Sec. 346, Ch. 350, L. 1974; R.C.M. 1947, 82-301.1.

23-3-102. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4551, R.C.M. 1921; amd. Sec. 1, Ch. 103, L. 1927; re-en. Sec. 4551, R.C.M. 1935; amd. Sec. 345, Ch. 350, L. 1974; amd. Sec. 19, Ch. 453, L. 1977; R.C.M. 1947, 82-301; amd. Sec. 5, Ch. 474, L. 1981.

23-3-103. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4552, R.C.M. 1921; amd. Sec. 2, Ch. 103, L. 1927; re-en. Sec. 4552, R.C.M. 1935; amd. Sec. 36, Ch. 93, L. 1969; amd. Sec. 347, Ch. 350, L. 1974; R.C.M. 1947, 82-302.

Part 2

Boxing, Sparring, and Wrestling Matches (Repealed. Sec. 1, Ch. 322, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

23-3-201. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4554, R.C.M. 1921; amd. Sec. 3, Ch. 103, L. 1927; re-en. Sec. 4554, R.C.M. 1935; amd. Sec. 1, Ch. 171, L. 1953; amd. Sec. 348, Ch. 350, L. 1974; amd. Sec. 1, Ch. 5, L. 1977; R.C.M. 1947, 82-303.

23-3-202. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4555, R.C.M. 1921; amd. Sec. 4, Ch. 103, L. 1927; re-en. Sec. 4555, R.C.M. 1935; R.C.M. 1947, 82-304.

23-3-203. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4556, R.C.M. 1921; amd. Sec. 5, Ch. 103, L. 1927; re-en. Sec. 4556, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1947; amd. Sec. 349, Ch. 350, L. 1974; R.C.M. 1947, 82-305.

23-3-204. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4557, R.C.M. 1921; amd. Sec. 6, Ch. 103, L. 1927; re-en. Sec. 4557, R.C.M. 1935; amd. Sec. 350, Ch. 350, L. 1974; R.C.M. 1947, 82-306.

23-3-205. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4558, R.C.M. 1921; amd. Sec. 7, Ch. 103, L. 1927; re-en. Sec. 4558, R.C.M. 1935; R.C.M. 1947, 82-307.

23-3-206. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4559, R.C.M. 1921; amd. Sec. 8, Ch. 103, L. 1927; re-en. Sec. 4559, R.C.M. 1935; amd. Sec. 2, Ch. 171, L. 1953; amd. Sec. 162, Ch. 147, L. 1963; amd. Sec. 30, Ch. 271, L. 1963; amd. Sec. 351, Ch. 350, L. 1974; amd. Sec. 1, Ch. 217, L. 1975; R.C.M. 1947, 82-308.

23-3-207. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4560, R.C.M. 1921; amd. Sec. 9, Ch. 103, L. 1927; re-en. Sec. 4560, R.C.M. 1935; amd. Sec. 3, Ch. 171, L. 1953; amd. Sec. 352, Ch. 350, L. 1974; amd. Sec. 2, Ch. 217, L. 1975; R.C.M. 1947, 82-309.

23-3-208. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4561, R.C.M. 1921; amd. Sec. 10, Ch. 103, L. 1927; re-en. Sec. 4561, R.C.M. 1935; amd. Sec. 353, Ch. 350, L. 1974; R.C.M. 1947, 82-310.

23-3-209. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4562, R.C.M. 1921; amd. Sec. 11, Ch. 103, L. 1927; re-en. Sec. 4562, R.C.M. 1935; R.C.M. 1947, 82-311.

Part 3

General

23-3-301. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of athletics provided for in 2-15-1882.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. Sec. 2, Ch. 506, L. 1983.

Part 4

Board of Athletics

23-3-401. Board organization — compensation — meetings — department to keep records. (1) The board shall annually elect officers as it considers necessary. Two of the members of the board constitute a quorum to do business, and except as provided in 23-3-402, the concurrence of at least two members is necessary to take board action.

(2) The members of the board are entitled to compensation and expenses as provided in 37-1-133.

(3) The department shall keep a record of the board's proceedings, which are public records subject to public inspection.

History: En. Sec. 3, Ch. 506, L. 1983; amd. Sec. 2, Ch. 11, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 11 in (1) substituted annual election requirement for former requirement that the Board meet before April 1 of each year; and made minor changes in style.

23-3-402. Enforcement of rules by board member — board designees. (1) In absence of a quorum of the board, any board member in attendance at and supervising a contest or exhibition has the full power of the board in enforcing rules of the board.

(2) The board may designate in writing representatives to act specifically on behalf of the board but only within the scope of the written authority.

History: En. Sec. 4, Ch. 506, L. 1983.

23-3-403. Board member conflict of interest. No board member may:

(1) serve as a manager, promoter, or trainer of a professional or semiprofessional boxer or wrestler;

(2) have a financial interest or affiliation in a professional or semiprofessional boxing or wrestling match;

(3) serve as ring official, timer, referee, or judge at a professional or semiprofessional boxing or wrestling match; or

(4) participate in a professional or semiprofessional boxing or wrestling match.

History: En. Sec. 5, Ch. 506, L. 1983; amd. Sec. 1, Ch. 97, L. 1985.

23-3-404. Board jurisdiction — license required — contestant participation. (1) The board has sole management, control, and jurisdiction over each professional or semiprofessional wrestling or boxing match or exhibition, including "so you think you are tough" boxing matches and mud wrestling, involving recognition, a prize, or purse and at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise, to be held within the state, except a match or exhibition conducted:

(a) by a university, college, or high school;

(b) by the military; or

(c) for contestants under 16 years of age, by a recognized amateur association.

(2) No organization or individual may conduct a match or exhibition within the board's jurisdiction unless it or he is the holder of an appropriate license granted by the board.

(3) No referee, manager, or judge may participate in a match or exhibition within the board's jurisdiction unless he is licensed by the board and the match or exhibition is conducted by an organization or individual licensed by the board.

(4) No professional or semiprofessional boxer or wrestler may participate in a match or exhibition within the board's jurisdiction unless he is licensed by the board and the match or exhibition is conducted by an organization or

individual licensed by the board and his right to participate has not been suspended under 23-3-603.

History: En. Sec. 6, Ch. 506, L. 1983; amd. Sec. 2, Ch. 97, L. 1985.

23-3-405. Rules. (1) The board may adopt rules for the administration and enforcement of this chapter.

(2) The rules must include but are not limited to the following:

(a) the granting, renewal, suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct matches or exhibitions or to be licensed as referees, managers, or judges. Such qualifications must include appropriate knowledge, experience, and integrity.

(b) the labeling of a match as a championship match;

(c) the number and length of rounds and the weight of gloves;

(d) the extent and timing of the physical examination of contestants;

(e) the attendance of a referee and his powers and duties; and

(f) review of decisions made by officials.

(3) The rules shall meet or exceed the safety codes required by recognized professional boxing and wrestling organizations and provide reasonable measures for the fair conduct of the matches or exhibitions and for the protection of the health and safety of the contestants. The rules shall require a physical examination of each contestant prior to each match or exhibition and the attendance of a licensed physician at ringside and shall provide for the qualifications of judges, referees, and seconds and for the payment of such officials by the promoter.

History: En. Sec. 7, Ch. 506, L. 1983; amd. Sec. 3, Ch. 97, L. 1985.

Part 5
Licenses

23-3-501. Licenses — fees. (1) The board may issue an annual license to a professional or semiprofessional boxing or wrestling promoter, whether an individual or organization, for the sole purpose of conducting professional or semiprofessional matches or exhibitions.

(2) The board may issue annual licenses to qualified referees, managers, boxers, wrestlers, seconds, trainers, and judges.

(3) Each application for an original license under this section or renewal of a license must be accompanied by a fee set by the board, commensurate with costs related to the particular license as provided in 37-1-134.

History: En. Sec. 8, Ch. 506, L. 1983.

23-3-502. Bond — conditions. (1) No license to conduct professional or semiprofessional matches or exhibitions may be issued unless the licensee has executed a bond in the sum of not less than $5,000.

(2) The bond must be conditioned on faithful compliance by the licensee with the provisions of this chapter and the rules of the board.

History: En. Sec. 9, Ch. 506, L. 1983.

Part 6

Reporting Requirements
Penalties

23-3-601. Report of ticket sales — tax on gross receipts — disposition of money received. (1) An individual or organization licensed to conduct a boxing or wrestling match or exhibition must, within 24 hours after the completion of each match or exhibition, furnish to the department a written report, verified by one of its officers or owners, showing the number of tickets sold for the match or exhibition, the amount of gross proceeds, and other matters as the board prescribes and must also within 24 hours pay to the department a tax of 5% of its total gross receipts, after deducting the federal admission tax, if any, from the sale of tickets.

(2) All taxes and fees collected by the department or the board under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 10, Ch. 506, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

23-3-602. Examination of books and records on failure to make report or on unsatisfactory report — penalty for failure to pay tax. (1) If an individual or organization fails to make a report of a contest at the time prescribed by 23-3-601 or if the report is unsatisfactory to the board, the board may examine the books and records of the individual or organization and subpoena and examine witnesses under oath for the purpose of determining the total amount of its gross receipts for a contest and the amount of tax due under this chapter.

(2) If the individual or organization remains in default in the payment of tax ascertained to be due for a period of 20 days after notice to such delinquent of the amount due, the delinquent forfeits its license and is disqualified from receiving a new license.

History: En. Sec. 11, Ch. 506, L. 1983.

23-3-603. Discipline. (1) A license issued under the provisions of this chapter may, after notice and opportunity for hearing, be revoked or suspended by the board for a violation of the provisions of this chapter or any rule of the board.

(2) The board may, after notice and opportunity for hearing, reprimand any professional or semiprofessional athlete or suspend, for a period not to exceed 1 year, his right to participate in any match or exhibition conducted by any licensee for:

(a) unsportsmanlike conduct while engaged in or arising directly from any match or exhibition;

(b) failure to compete in good faith or engaging in any sham match or exhibition; or

(c) the use of threatening or abusive language toward officials or spectators.

History: En. Sec. 12, Ch. 506, L. 1983.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Disciplinary authority of boards, 37-1-136.

23-3-604 through 23-3-610 reserved.

23-3-611. Violation as misdemeanor. A person who violates a provision of this chapter is guilty of a misdemeanor and upon conviction is punishable as provided in 46-18-212.

History: En. Sec. 13, Ch. 506, L. 1983.

CHAPTER 4

HORSERACING

Part 1 — Administration

23-4-101. Definitions.
23-4-102. Chairman — quorum — costs — salary.
23-4-103. Department's report — public record.
23-4-104. Duties of board.
23-4-105. Authority of board.
23-4-106. Executive secretary — powers and duties — staff — prohibition on racing activities.

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23-4-201. Licenses.
23-4-202. Penalty for violations of law — authority of board — judicial review.
23-4-203. Race meets — when lawful.
23-4-204. Race exclusively for Montana-bred horses — bonus for winner.
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Part 3 — Parimutuel Betting

23-4-301. Parimutuel betting — other betting illegal.
23-4-302. Distribution of deposits — breakage.
23-4-303. Licensee's right to withhold deposits.
23-4-304. Gross receipts — department's percentage — collection and allocation.
23-4-305. Deposit of unclaimed money.

Chapter Cross-References

Board of Horseracing created, 2-15-1881.

Local government — no power to regulate gambling, 7-1-112.

Cruelty to animals — horseraces longer than 2 miles, 45-8-211.

Part 1

Administration

23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of horseracing provided for in 2-15-1881.

(2) "Board of stewards" means a board composed of three stewards who supervise race meets.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(5) "Minor" means a person under 18 years of age.

(6) "Persons" means individuals, firms, corporations, fair boards, and associations.

(7) "Race meet" means racing of registered horses or mules where the parimutuel system of wagering is used. The term includes simulcast races.

(8) "Simulcast" means a live broadcast of an actual horserace at the time it is run. The term includes races of local or national prominence.

(9) "Simulcast facility" means a facility at which horseraces are simulcast and wagering on the outcome is permitted under the parimutuel system.

(10) "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.

History: En. Sec. 2, Ch. 196, L. 1965; amd. Sec. 13, Ch. 350, L. 1974; R.C.M. 1947, 62-502; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 563, L. 1983; amd. Sec. 1, Ch. 192, L. 1989; amd. Sec. 1, Ch. 557, L. 1989.

23-4-102. Chairman — quorum — costs — salary. (1) The board shall organize by electing one of its members chairman. Three members of the board shall constitute a quorum for the transaction of business by the board.

(2) The board may incur costs, charges, and expenses reasonably necessary to carry out this chapter.

(3) Each member may be paid $50 for each day in which he is actually and necessarily engaged in the performance of board duties and shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in his official service.

History: En. Sec. 3, Ch. 196, L. 1965; amd. Sec. 1, Ch. 213, L. 1973; amd. Sec. 2, Ch. 457, L. 1973; amd. Sec. 14, Ch. 350, L. 1974; amd. Sec. 9, Ch. 453, L. 1977; R.C.M. 1947, 62-503; amd. Sec. 1, Ch. 214, L. 1989.

23-4-103. Department's report — public record. (1) The department shall keep detailed records of board meetings, of the business transacted at the meetings, and licenses applied for and issued.

(2) Records of the board kept by the department are public records subject to public inspection.

History: En. Sec. 4, Ch. 196, L. 1965; amd. Sec. 17, Ch. 93, L. 1969; amd. Sec. 15, Ch. 350, L. 1974; R.C.M. 1947, 62-504.

23-4-104. Duties of board. The board shall adopt rules to govern race meets and the parimutuel system. These rules shall include the following:

(1) definitions;

(2) auditing;

(3) supervision of the parimutuel system;

(4) corrupt practices;

(5) supervision, duties, and responsibilities of the executive secretary, presiding steward, racing secretary, and other racing officials;

(6) licensing of all personnel who have anything to do with the substantive operation of racing;

(7) the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state;

(8) the veterinary practices and standards which must be observed in connection with race meets;

(9) absolute responsibility of trainers for the condition of horses and mules, regardless of the acts of third parties;

(10) licensing or renewal of a license of a person whose license has been suspended by the board or another horseracing jurisdiction;

(11) setting license fees commensurate with the cost of issuing a license;

(12) the time, conduct, and supervision of simulcast races and parimutuel betting on simulcast races; and

(13) licensing, approval, and regulation of simulcast facilities.

History: **En. Sec. 5, Ch. 196, L. 1965; amd. Sec. 1, Ch. 216, L. 1967; amd. Sec. 16, Ch. 350, L. 1974; amd. Sec. 1, Ch. 533, L. 1977; R.C.M. 1947, 62-505(part); amd. Sec. 5, Ch. 563, L. 1983; amd. Sec. 2, Ch. 192, L. 1989; amd. Sec. 2, Ch. 557, L. 1989.**

Cross-References

Licensing of veterinarians, Title 37, ch. 18.

23-4-105. Authority of board. The board shall, subject to 37-1-101 and 37-1-121, license and regulate racing and review race meets held in this state under this chapter. If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently engaged in Montana, it shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board should consider both economic and safety impacts on the existing racing and breeding industry.

History: **En. Sec. 6, Ch. 196, L. 1965; amd. Sec. 17, Ch. 350, L. 1974; R.C.M. 1947, 62-506; amd. Sec. 6, Ch. 563, L. 1983; amd. Sec. 3, Ch. 192, L. 1989; amd. Sec. 3, Ch. 557, L. 1989.**

23-4-106. Executive secretary — powers and duties — staff — prohibition on racing activities. (1) The department shall appoint an executive secretary for the board.

(2) The executive secretary, in accordance with rules adopted by the board and provisions of this chapter, shall:

(a) supervise race meets and activities of racing officials;

(b) hire all state racing officials for the department;

(c) inspect race facilities;

(d) prescribe the duties and salary of state stewards; and

(e) perform other duties as directed by the board.

(3) The executive secretary may, subject to the approval of the board, hire staff to assist him in performing his duties.

(4) The executive secretary, a member of his staff, and any member of the executive secretary's or a staff member's immediate family are prohibited from owning, training, or having any interest in a racehorse or mule running on a Montana track or having any financial interest in any Montana racing association. No racing official hired by the department or approved by the board may wager at a race meet at which he presides.

History: **En. Sec. 7, Ch. 563, L. 1983; amd. Sec. 4, Ch. 192, L. 1989; amd. Sec. 1, Ch. 447, L. 1991.**

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

Part 2
Race Meets

23-4-201. Licenses. (1) It is unlawful for a person to hold a race meet, including simulcast race meets under the parimutuel system, in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall file an application with the department which shall set forth the time, place, and number of days the license will continue and other information the board requires.

(2) A person who participates in a race meet shall be licensed and charged an annual fee set by the board, which shall be paid to the department and used for expenses of administering this chapter, subject to 37-1-101(6). Each person holding a license under this chapter shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) A license may not be issued to a person who has failed to pay the fees, taxes, or money required under this chapter.

(4) Applications to hold race meets shall be submitted to the department, and the board shall act on the applications within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board and an independent racing association conducting race meets meet the requirements of the rules adopted by the board before granting a license.

(6) A racing association consisting of a local fair board or an association approved by a local fair board may apply for a license to hold a simulcast race meet in a simulcast facility.

(7) An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board.

History: (1), (3) thru (5)En. Sec. 7, Ch. 196, L. 1965; amd. Sec. 2, Ch. 216, L. 1967; amd. Sec. 18, Ch. 350, L. 1974; Sec. 62-507, R.C.M. 1947; (2)En. Sec. 5, Ch. 196, L. 1965; amd. Sec. 1, Ch. 216, L. 1967; amd. Sec. 16, Ch. 350, L. 1974; amd. Sec. 1, Ch. 533, L. 1977; Sec. 62-505, R.C.M. 1947; R.C.M. 1947, 62-505(part), 62-507; amd. Sec. 8, Ch. 563, L. 1983; amd. Sec. 4, Ch. 557, L. 1989.

23-4-202. Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, and a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which they officiate may exclude from racecourses in this state a person whom the board considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid application for relicensure for a 2-year period.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed herein. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 2% of exotic wagering on races, including simulcast races, to be used as a bonus for owners pursuant to 23-4-304(2), and up to 30% of the amount set aside may be used to defray administrative costs which shall be in addition to the 20% already withheld under 23-4-302;

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; and

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter.

History: En. Sec. 8, Ch. 196, L. 1965; amd. Sec. 1, Ch. 183, L. 1974; amd. Sec. 19, Ch. 350, L. 1974; amd. Sec. 1, Ch. 306, L. 1977; R.C.M. 1947, 62-508(part); amd. Sec. 9, Ch. 563, L. 1983; amd. Sec. 5, Ch. 557, L. 1989.

Cross-References

Administrative rules, contested cases, and judicial review, Title 2, ch. 4.

23-4-203. Race meets — when lawful. It is lawful to conduct live or simulcast race meets at a racetrack or simulcast facility or otherwise at any time during the week.

History: En. Sec. 8, Ch. 196, L. 1965; amd. Sec. 1, Ch. 183, L. 1974; amd. Sec. 19, Ch. 350, L. 1974; amd. Sec. 1, Ch. 306, L. 1977; R.C.M. 1947, 62-508(part); amd. Sec. 6, Ch. 557, L. 1989.

23-4-204. Race exclusively for Montana-bred horses — bonus for winner. (1) For the purpose of encouraging the breeding in this state of valuable registered horses, at least one race each day at each race meet shall be limited to horses bred in this state unless, in the board's judgment, there is an insufficient number of Montana-bred horses for such a race. If in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead.

(2) A sum equal to 10% of the first money of every purse won by a horse bred in this state shall be paid by the licensee conducting the race meet to the breeder of the horse. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.

(3) Two percent of exotic wagering on a simulcast race shall be placed in a fund to be distributed by the board, in addition to existing Montana breeders' awards, on a percentage basis of actual breeders' awards earned.

(4) Up to 10% of the amount set aside for Montana breeders' awards may be used to defray administrative costs in addition to the 20% withheld under 23-4-302.

History: En. Sec. 9, Ch. 196, L. 1965; amd. Sec. 20, Ch. 350, L. 1974; amd. Sec. 2, Ch. 306, L. 1977; R.C.M. 1947, 62-509; amd. Sec. 10, Ch. 563, L. 1983; amd. Sec. 7, Ch. 557, L. 1989.

23-4-205. Public liability insurance. For the protection of the public, exhibitors, and visitors, a person licensed to conduct a race meet or operate a simulcast facility under this chapter shall carry public liability insurance in an amount and form of contract approved by the board.

History: En. Sec. 10, Ch. 196, L. 1965; amd. Sec. 3, Ch. 216, L. 1967; amd. Sec. 21, Ch. 350, L. 1974; R.C.M. 1947, 62-510; amd. Sec. 8, Ch. 557, L. 1989.

Cross-References

Liability insurance, Title 33, ch. 23 and 24.

Part 3
Parimutuel Betting

Part Cross-References

Gambling — when authorized, Art. III, sec. 9, Mont. Const.

23-4-301. Parimutuel betting — other betting illegal. (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under 23-5-502 or this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) A person licensed under this chapter to hold a race meet may simulcast live races at a place in the race meet grounds or simulcast facility where the licensee may conduct or supervise the use of the parimutuel system by patrons on the results of simulcast races approved by the board.

(4) It is unlawful to conduct pool selling or bookmaking or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

(5) Each licensee conducting a parimutuel system for an intrastate simulcast race meet shall combine the parimutuel pools at a simulcast facility with those at the actual racing facility for the purpose of determining the odds and computing payoffs. The amount of the handle at the simulcast race meet must be combined with the amount of parimutuel handle at the live racing facility for the purposes of distribution of money derived from parimutuel betting under 23-4-302 and 23-4-304.

(6) Negotiated purse money from intrastate and interstate simulcast parimutuel handles at racing associations that do not conduct live racing will

be pooled and distributed to all tracks conducting live racing, all moneys to be distributed on a percent, based on each track's percent, of total annual on-track parimutuel handle.

History: En. Sec. 11, Ch. 196, L. 1965; amd. Sec. 4, Ch. 216, L. 1967; amd. Sec. 22, Ch. 350, L. 1974; R.C.M. 1947, 62-511; amd. Sec. 11, Ch. 563, L. 1983; amd. Sec. 1, Ch. 221, L. 1987; amd. Sec. 9, Ch. 557, L. 1989; amd. Sec. 1, Ch. 516, L. 1991; amd. Sec. 1, Ch. 449, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 449 near end of (1) inserted reference to 23-5-502. Amendment effective April 21, 1993.

23-4-302. Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system shall distribute all sums deposited in any pool to the winner thereof, less an amount which in the case of exotic wagering on races shall not exceed 25% and in all other races shall not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all sums deposited with the licensee in any pool for such simulcast race meet, less an amount which in the case of exotic wagering on such races shall not exceed 25% and in all other such races shall not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of its total parimutuel handle of the simulcast facility and give it to the local fair board. The money must be used to operate or enhance the county fairgrounds facility.

History: En. Sec. 12, Ch. 196, L. 1965; R.C.M. 1947, 62-512; amd. Sec. 12, Ch. 563, L. 1983; amd. Sec. 10, Ch. 557, L. 1989; amd. Sec. 2, Ch. 516, L. 1991.

23-4-303. Licensee's right to withhold deposits. In the event any government or governmental agency imposes a levy on a licensee by a special tax on the money so deposited under the parimutuel system or upon or against his receipts therefrom, the said licensee may withhold in addition to the aforesaid percent and breakage the amount of the tax so levied.

History: En. Sec. 13, Ch. 196, L. 1965; R.C.M. 1947, 62-513.

23-4-304. Gross receipts — department's percentage — collection and allocation. (1) (a) The licensee shall pay to the department 1% of the gross receipts of each day's parimutuel betting at each race meet, which sums shall be paid to the department within 5 days after receipt by the licensee. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance shall be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all sums collected under 23-4-202(4)(d) on exotic wagering on races.

(b) Each licensed simulcast facility shall pay to the department either 1% of the gross receipts of each day's parimutuel betting at each race meet or the actual cost to the board of regulating the simulcast race meet, whichever is higher. The money must be paid to the department within 5 days after receipt of the money by the licensee. At the end of each race meet the licensed simulcast facility shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department must be deposited in an account in the state special revenue fund and must be used for the administration of this chapter. The licensed simulcast facility shall, at the same time, pay to the department all sums collected under 23-4-202(4)(d) on exotic wagering on races.

(2) At the end of the racing season, sums collected under 23-4-202(4)(d) must be distributed by the department, after first passing through the board's agency fund account, to the licensed owners of those Montana-bred horses or mules finishing in the money at the meet from which the sums derived. The owner's award must be calculated as follows:

(a) divide the total amount collected under 23-4-202(4)(d) by the total amount won by Montana-bred horses or mules;

(b) multiply the quotient derived under subsection (2)(a) by the total amount of money won by each owner's Montana-bred horses or mules.

(3) For purposes of the owner's award under subsection (2), "owner" means the individual, partnership, corporation, person, or other entity that owns the horse or mule at the time of entry.

(4) Licensees may not consider the sums available under 23-4-202(4)(d) when establishing purses.

History: En. Sec. 14, Ch. 196, L. 1965; amd. Sec. 5, Ch. 216, L. 1967; amd. Sec. 23, Ch. 350, L. 1974; R.C.M. 1947, 62-514; amd. Sec. 13, Ch. 563, L. 1983; amd. Sec. 5, Ch. 192, L. 1989; amd. Sec. 11, Ch. 557, L. 1989.

23-4-305. Deposit of unclaimed money. Each licensee holding a race meet shall, within 30 days of the end of the meet, report to the board the total face value of all unclaimed winning tickets from each parimutuel pool. The money from unclaimed winning tickets must be retained by the licensee for capital improvement approved by the board.

History: En. 62-515 by Sec. 1, Ch. 199, L. 1974; R.C.M. 1947, 62-515; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 563, L. 1983.

CHAPTER 5

GAMBLING

Part 1 — General Provisions, Proceedings, and Penalties

23-5-101. Renumbered 23-5-112 by Code Commissioner, 1989.
23-5-102. Renumbered 23-5-151 by Code Commissioner, 1989.
23-5-103. Renumbered 23-5-152 by Code Commissioner, 1989.
23-5-104. Renumbered 23-5-153 by Code Commissioner, 1989.
23-5-105. Repealed.
23-5-106. Repealed.

23-5-107. Repealed.
23-5-108. Renumbered 23-5-154 by Code Commissioner, 1989.
23-5-109. Repealed.
23-5-110. Public policy of state concerning gambling.
23-5-111. Construction and application.
23-5-112. Definitions.
23-5-113. Department as criminal justice agency — seized property.
23-5-114. Department employees — activities prohibited.
23-5-115. Powers and duties of department — licensing.
23-5-116. Disclosure of information.
23-5-117. Premises approval.
23-5-118. Transfer of ownership interest.
23-5-119 and 23-5-120 reserved.
23-5-121. Repealed.
23-5-122. Repealed.
23-5-123. Disposal of money confiscated by reason of violation of gambling laws.
23-5-124 through 23-5-127. Repealed.
23-5-128. Distributor's license — fees.
23-5-129. Route operator's license — fees.
23-5-130. Allowable compensation for route operator.
23-5-131. Losses at illegal gambling may be recovered in civil action.
23-5-132. Repealed.
23-5-133. Repealed.
23-5-134. Repealed.
23-5-135. Discharge of defendant.
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23-5-137. Judicial review.
23-5-138. Evidence in administrative proceedings.
23-5-139 and 23-5-140 reserved.
23-5-141 through 23-5-144. Repealed.
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23-5-151. Gambling prohibited.
23-5-152. Possession of illegal gambling device or conducting illegal gambling enterprise prohibited — exceptions.
23-5-153. Possession and sale of antique slot machines.
23-5-154. Soliciting participation in illegal gambling activity prohibited.
23-5-155. Counterfeiting or defacing documents — penalty.
23-5-156. Obtaining anything of value by fraud or operation of illegal gambling device or enterprise.
23-5-157. Gambling on cash basis.
23-5-158. Minors not to participate — penalty — exception.
23-5-159. Illegal sale, assignment, lease, or transfer of license — penalty.
23-5-160. Shaking dice for a drink or music or in a shake-a-day game.
23-5-161. Criminal liabilities — misdemeanor.
23-5-162. Criminal liabilities — felony.
23-5-163 reserved.
23-5-164. Payroll checks — promotional activities prohibited.
23-5-165. Fishing derbies and wagering on natural occurrences.
23-5-166 through 23-5-170 reserved.
23-5-171. Authority of local governments to regulate gambling.
23-5-172. Prosecution.
23-5-173 through 23-5-175 reserved.
23-5-176. Qualifications for licensure.
23-5-177. Operator of gambling establishment — license — fee.

Part 2 — Calcutta Pools

23-5-201 through 23-5-211. Repealed.
23-5-212 through 23-5-220 reserved.
23-5-221. Definition.
23-5-222. Calcutta pools authorized.

23-5-223. Penalty.
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23-5-302. Repealed.
23-5-303. Repealed.
23-5-304 and 23-5-305 reserved.
23-5-306. Live card game table — permit — fees — disposition of fees.
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23-5-308. Card game dealers — license.
23-5-309. Requirements for conducting card games.
23-5-310. Exemption from certain sections.
23-5-311. Authorized card games.
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23-5-313. Rules of play to be posted — rake-off approved.
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23-5-316. Repealed.
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23-5-319 and 23-5-320 reserved.
23-5-321. Issuance of permits by local governing bodies prohibited.
23-5-322. Repealed.
23-5-323. Repealed.
23-5-324. Card room contractor's license — fee — submission of contract.
23-5-325 through 23-5-330 reserved.
23-5-331. Penalty.
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23-5-402. Repealed.
23-5-403. Repealed.
23-5-404 reserved.
23-5-405. Authorized live bingo, keno, and raffles.
23-5-406. Exempt charitable organizations and facilities.
23-5-407. Live bingo or keno permit — fees — disposition of fees.
23-5-408. Hours of play — restrictions.
23-5-409. Bingo and keno tax — records — distribution — statement and payment.
23-5-410. Exemption from certain sections.
23-5-411. Repealed.
23-5-412. Card prices and prizes — exception.
23-5-413. Raffle prizes — permits — exceptions.
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23-5-502. Sports pools and sports tab games authorized — tax.

23-5-503. Rules.
23-5-504 through 23-5-508. Repealed.
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23-5-512. Sports pool design — department rules.

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23-5-602. Definitions.
23-5-603. Video gambling machines — possession — play — restriction.
23-5-604 reserved.
23-5-605. Repealed.
23-5-606. Repealed.
23-5-607. Expected payback — verification.
23-5-608. Limitation on amount of money played and value of prizes — payment of credits in cash.
23-5-609. Repealed.
23-5-610. Video gambling machine gross income tax — records — distribution — quarterly statement and payment.
23-5-611. Machine permit qualifications — limitations.
23-5-612. Machine permits — fee.
23-5-613. Violations.
23-5-614. Sale of video gambling machines by operator or lienholder.
23-5-615. Repealed.
23-5-616. Removal of machine from public access.
23-5-617. Repealed.
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23-5-619 reserved.
23-5-620. Video gambling machines — hours of play.
23-5-621. Video gambling machine specifications — rules.
23-5-622. Tampering with video gambling machine — penalty.
23-5-623 and 23-5-624 reserved.
23-5-625. Video gambling machine manufacturer — license — fees — restrictions.
23-5-626. Repealed.
23-5-627. Repealed.
23-5-628. Inspection of premises, records, and devices.
23-5-629 and 23-5-630 reserved.
23-5-631. Examination and approval of new video gambling machines and associated equipment — fee.
23-5-632 through 23-5-634 reserved.
23-5-635. Repealed.
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23-5-702. Casino nights authorized.
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23-5-705. Application for permit.
23-5-706. Issuance of permit — disposition of fee.
23-5-707 through 23-5-709 reserved.
23-5-710. Requirements for conducting casino nights.
23-5-711. Nonapplicability of certain gambling laws.
23-5-712 through 23-5-714 reserved.
23-5-715. Rules.

Part 8 — Fantasy Sports Leagues

23-5-801. Fantasy sports leagues defined.

23-5-802. Fantasy sports leagues authorized.
23-5-803 and 23-5-804 reserved.
23-5-805. Payouts — administrative fees charged by commercial establishments.
23-5-806. Sports betting prohibited — applicability.
23-5-807 through 23-5-809 reserved.
23-5-810. Violations.

Part 9 reserved

Part 10 — State Lottery
(Renumbered. Sec. 57, Ch. 647, L. 1991)

Part 11 — Calcutta Pools
(Renumbered and Repealed.
Sec. 68, 72, Ch. 642, L. 1989)

Chapter Cross-References

Gambling prohibited unless authorized by Legislature or the people, Art. III, sec. 9, Mont. Const.

Part 1

General Provisions, Proceedings, and Penalties

Part Cross-References

Local government — no power to regulate gambling unless delegated, 7-1-112.

Bingo, keno, and raffles authorized, 23-5-405.

Amusement games, Title 23, ch. 6, part 1.

Gambling — basis for discharge of highway patrol officer, 44-1-612.

23-5-101. Renumbered 23-5-112 by Code Commissioner, 1989.

23-5-102. Renumbered 23-5-151 by Code Commissioner, 1989.

23-5-103. Renumbered 23-5-152 by Code Commissioner, 1989.

23-5-104. Renumbered 23-5-153 by Code Commissioner, 1989.

23-5-105. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 4, Ch. 197, L. 1949; Sec. 94-2432, R.C.M. 1947; redes. 94-8-431 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 26, Ch. 508, L. 1977; R.C.M. 1947, 94-8-431.

23-5-106. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 4, Ch. 115, L. 1907; Sec. 8419, Rev. C. 1907; re-en. Sec. 11162, R.C.M. 1921; re-en. Sec. 11162, R.C.M. 1935; Sec. 94-2406, R.C.M. 1947; redes. 94-8-406 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-406; amd. Sec. 7, Ch. 198, L. 1981.

23-5-107. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 3, Ch. 115, L. 1907; Sec. 8418, Rev. C. 1907; re-en. Sec. 11161, R.C.M. 1921; Cal. Pen. C. Sec. 332; re-en. Sec. 11161, R.C.M. 1935; Sec. 94-2405, R.C.M. 1947; redes. 94-8-405 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 70, Ch. 359, L. 1977; R.C.M. 1947, 94-8-405.

23-5-108. Renumbered 23-5-154 by Code Commissioner, 1989.

23-5-109. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 6, Ch. 115, L. 1907; Sec. 8421, Rev. C. 1907; re-en. Sec. 11164, R.C.M. 1921; re-en. Sec. 11164, R.C.M. 1935; Sec. 94-2408, R.C.M. 1947; redes. 94-8-408 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-408.

23-5-110. Public policy of state concerning gambling. (1) The legislature finds that for the purpose of ensuring the proper gambling environment in this state it is necessary and desirable to adopt a public policy regarding public gambling activities in Montana. The legislature therefore declares it is necessary to:

(a) create and maintain a uniform regulatory climate that assures players, owners, tourists, citizens, and others that the gambling industry in this state is fair and is not influenced by corrupt persons, organizations, or practices;

(b) protect legal public gambling activities from unscrupulous players and vendors and detrimental influences;

(c) protect the public from unscrupulous proprietors and operators of gambling establishments, games, and devices;

(d) protect the state and local governments from those who would conduct illegal gambling activities that deprive those governments of their tax revenues;

(e) protect the health, safety, and welfare of all citizens of this state, including those who do not gamble, by regulating gambling activities; and

(f) promote programs necessary to provide assistance to those who are adversely affected by legalized gambling, including compulsive gamblers and their families.

(2) The legislature adopts the policy that an applicant for a license or permit or other department approval under parts 1 through 8 of this chapter does not have a right to the issuance of a license or permit or the granting of the approval sought. The issuance of a license or permit issued or other department approval granted pursuant to the provisions of parts 1 through 8 of this chapter is a privilege revocable only for good cause. A holder does not acquire a vested right in the license or permit issued or other department approval granted. A license or permit issued under parts 1 through 8 of this chapter may not be sold, assigned, leased, or transferred.

(3) Revenue to fund the expense of administration and control of gambling as regulated by parts 1 through 8 of this chapter must be derived solely from fees, taxes, and penalties on gambling activities, except the gambling activities of the Montana state lottery and the parimutuel industry.

History: En. Sec. 1, Ch. 642, L. 1989; amd. Sec. 1, Ch. 398, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 398 in (2) and (3) extended reference from parts 1 through 6 to parts 1 through 8.

23-5-111. Construction and application. In view of Article III, section 9, of the Montana constitution, parts 1 through 8 of this chapter must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by those parts.

History: (1)En. Sec. 65, Ch. 642, L. 1989; (2)En. Sec. 2, Ch. 642, L. 1989; amd. Sec. 2, Ch. 398, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 398 near beginning, after "constitution", substituted "parts 1 through 8 of this chapter" for "Chapter 642, Laws of 1989" and at end substituted "those parts" for "Chapter 642, Laws of 1989"; and deleted former (2) that read: "(2) This chapter applies only to public gambling activities within the state of Montana."

23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise. The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services. The term does not mean:

(a) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(b) a promotional game of chance; or

(c) an amusement game regulated under chapter 6 of this title.

(15) "Gross proceeds" means gross revenue received less prizes paid out.

(16) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under chapter 7 or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

(17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160; and

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in chapter 4 of this title and parts 2, 5, and 8 of this chapter.

(18) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(19) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(20) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab card manufac-

turer, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

(21) "Licensee" means a person who has received a license from the department.

(22) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(23) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. The term does not mean lotteries authorized under chapter 7 of this title.

(24) "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator.

(25) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

(26) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(27) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(28) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(29) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(30) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(31) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(32) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(33) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

(34) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of family services.

(35) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(36) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department.

History: En. Secs. 2, 3, Ch. 197, L. 1949; Secs. 94-2429, 94-2431, R.C.M. 1947; redes. 94-8-429, 94-8-430 by Sec. 29, Ch. 513, L. 1973; amd. Secs. 24, 25, Ch. 508, L. 1977; R.C.M. 1947, 94-8-429, 94-8-430; amd. Sec. 3, Ch. 642, L. 1989; Sec. 23-5-101, MCA 1987; redes. 23-5-112 by Code Commissioner, 1989; amd. Sec. 1, Ch. 473, L. 1991; amd. Sec. 8, Ch. 523, L. 1991; amd. Sec. 1, Ch. 647, L. 1991; amd. Sec. 3, Ch. 398, L. 1993; amd. Sec. 2, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 398 throughout section substituted "parts 1 through 8" for "parts 1 through 6"; inserted definition of gift enterprise; in definition of illegal gambling enterprise, at end of (b), substituted "including activities authorized by 23-5-160" for "include an activity in which a participant rolls one or more dice for a chance to obtain a drink or music" and in (c), after "5", inserted "and 8"; in definition of license, after "means", substituted "a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab card manufacturer, manufacturer of electronic live bingo or keno equipment" for "an operator's license"; in definition of lottery deleted "or "gift enterprise"" as defined term, at beginning of last sentence substituted "The term" for "However, "gift enterprise"", and at end substituted "of this title" for "cash or merchandise attendance prizes or premiums that the county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos"; and made minor changes in style.

Chapter 626 in definition of bingo, near end, substituted "one or more" for "a"; in definition of distributor, in (a), substituted "a licensed manufacturer, distributor, or route operator" for "another person" and in (b), after "sells", deleted "leases, or otherwise furnishes" and substituted "a licensed distributor, route operator, or operator" for "another person for use in public"; in definition of license substituted references to other manufacturer's, distributor's, and route operator's license for reference to manufacturer-distributor license; in definition of manufacturer, after "device", inserted "and who sells the equipment directly to a licensed distributor, route operator, or operator"; in definition of promotional game of chance inserted last sentence regarding disposition or distribution of property; inserted definition of route operator; and made minor changes in style.

The definition of license, amended by both chapters in a manner not creating a conflict, was slightly reworded by the codifier for grammatical purposes.

23-5-113. Department as criminal justice agency — seized property. (1) The department is a criminal justice agency. Designated agents of the department are granted peace officer status, with the power of search, seizure, and arrest, to investigate gambling activities in this state regulated by parts 1 through 8 of this chapter and the rules of the department and to report violations to the county attorney of the county in which they occur.

(2) Upon conviction for any violation of parts 1 through 8 of this chapter, the court may order any property seized by a department or local law enforcement agent during a lawful search to be forfeited to the department, sold, if necessary, and disposed of under 23-5-123.

History: En. Sec. 5, Ch. 642, L. 1989; amd. Sec. 2, Ch. 647, L. 1991; amd. Sec. 4, Ch. 398, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 398 in (1) and (2) extended reference from parts 1 through 6 to parts 1 through 8.

23-5-114. Department employees — activities prohibited. (1) An employee of the department directly involved with the prosecution, investigation, regulation, or licensing of gambling, as designated by the attorney general, may not:

(a) serve as an officer of a business or organization that conducts a gambling activity, other than as an officer of a nonprofit organization;

(b) be employed by a licensed operator in any capacity that requires assisting in conducting a gambling activity regulated under parts 1 through 6 of this chapter or maintaining records for the gambling activity;

(c) have a beneficial or pecuniary interest in a contract for the manufacture, lease, or sale of a gambling device, the conduct of a gambling activity, or the provision of independent consultant services in connection with a gambling activity; or

(d) participate in a gambling activity governed by parts 1 through 6 of this chapter, except in performing assigned employment duties. An employee may participate in a gambling activity governed by chapter 4 or 7 of this title.

(2) The prohibitions in subsections (1)(a) through (1)(c) apply to a former designated department employee during the first year following termination from employment with the department if the employee was directly involved with the prosecution, investigation, regulation, or licensing of gambling immediately before termination.

History: En. Sec. 6, Ch. 642, L. 1989; amd. Sec. 26, Ch. 647, L. 1991.

23-5-115. Powers and duties of department — licensing. (1) The department shall administer the provisions of parts 1 through 8 of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 8 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

(5) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 8 of this chapter.

(6) The department may not make public or otherwise disclose information obtained in the application or tax reporting processes, except for general statistical reporting or studies or as provided in 23-5-116.

(7) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 8 of this chapter.

History: En. Sec. 7, Ch. 642, L. 1989; amd. Sec. 3, Ch. 647, L. 1991; amd. Sec. 5, Ch. 398, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 398 throughout section extended reference from parts 1 through 6 to parts 1 through 8.

23-5-116. Disclosure of information. (1) The department shall, upon request, disclose the following information from a license or permit application:

(a) the applicant's name;

(b) the address of the business where the activity under the license or permit is to be conducted;

(c) the name of each person having an ownership interest in the business; and

(d) types of permits requested by the applicant.

(2) In addition to the information enumerated in subsection (1), the department may disclose any other relevant information obtained in the application or tax reporting process or as a result of other department operations to:

(a) a federal, state, city, county, or tribal criminal justice agency; and

(b) the department of revenue and the federal internal revenue service.

History: En. Sec. 4, Ch. 647, L. 1991.

23-5-117. Premises approval. (1) Except as provided in subsection (4), the department may approve a premises for issuance of an operator's license if the premises meets the requirements contained in subsections (2) and (3).

(2) The premises must:

(a) be a structure or facility that is clearly defined by permanently installed walls that extend from floor to ceiling;

(b) have a unique address assigned by the local government in which the premises is located; and

(c) have a public external entrance, leading to a street or other common area, that is not shared with another premises for which an operator's license has been issued.

(3) If the premises shares a common internal wall with another premises for which an operator's license has been issued, the common wall must be permanently installed, opaque, and extend from floor to ceiling and may not contain an internal entrance through which public access is allowed.

(4) A second operator's license may be issued or renewed until June 30, 1996, for a person operating a gambling activity on a premises that did not meet the requirements of subsections (2) and (3) if:

(a) the second operator's license was issued to the person on or before January 1, 1991; or

(b) (i) the application for the second operator's license was received by the department on or before January 1, 1991;

(ii) a second on-premises alcoholic beverages license was obtained for the premises on or before January 1, 1991; and

(iii) substantial physical modifications to the premises were made on or before January 1, 1991.

History: En. Sec. 7, Ch. 647, L. 1991; amd. Sec. 6, Ch. 398, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 398 at end of (1) substituted "subsections (2) and (3)" for "subsections (2) through (4)".

23-5-118. Transfer of ownership interest. (1) In this section, "licensed gambling operation" means a business for which a license was obtained under parts 1 through 8 of this chapter.

(2) Except as provided in subsection (3), an owner of an interest in a licensed gambling operation shall notify the department in writing and receive approval from the department before transferring any ownership interest in the operation.

(3) This section does not apply to the transfer of a security interest in a licensed gambling operation or to the transfer of less than 5% of the interest in a publicly traded corporation.

History: En. Sec. 8, Ch. 647, L. 1991; amd. Sec. 7, Ch. 398, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 398 inserted (1) defining licensed gambling operation; in (2) inserted exception clause, after "writing" inserted "and receive approval from the department", and at end substituted "the operation" for "his premises"; inserted (3) relating to applicability of section to certain transfers of security interests; and made minor changes in style.

23-5-119 and 23-5-120 reserved.

23-5-121. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 8, Ch. 115, L. 1907; Sec. 8423, Rev. C. 1907; re-en. Sec. 11166, R.C.M. 1921; re-en. Sec. 11166, R.C.M. 1935; Sec. 94-2410, R.C.M. 1947; redes. 94-8-410 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-410; amd. Sec. 3, Ch. 503, L. 1983.

23-5-122. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 9, Ch. 115, L. 1907; Sec. 8424, Rev. C. 1907; re-en. Sec. 11167, R.C.M. 1921; re-en. Sec. 11167, R.C.M. 1935; Sec. 94-2411, R.C.M. 1947; redes. 94-8-411 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 21, Ch. 508, L. 1977; R.C.M. 1947, 94-8-411.

23-5-123. Disposal of money confiscated by reason of violation of gambling laws. All fines, penalties, forfeitures, and confiscated money collected by criminal, civil, or administrative process for a violation of a provision of parts 1 through 8 of this chapter or a rule of the department must be deposited one-half in the state general fund and one-half in the general fund of the county in which the violation occurred.

History: En. Sec. 1, Ch. 25, L. 1933; re-en. Sec. 11167.1, R.C.M. 1935; Sec. 94-2412, R.C.M. 1947; redes. 94-8-412 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-412; amd. Sec. 9, Ch. 642, L. 1989; amd. Sec. 8, Ch. 398, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 398 near middle extended reference from parts 1 through 6 to parts 1 through 8.

Cross-References

Funding and use of county poor fund, 53-2-322.

23-5-124 through 23-5-127. Repealed. Sec. 68, Ch. 642, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

23-5-124. En. Sec. 11, Ch. 115, L. 1907; Sec. 8426, Rev. C. 1907; re-en. Sec. 11169, R.C.M. 1921; re-en. Sec. 11169, R.C.M. 1935; Sec. 94-2414, R.C.M. 1947; redes. 94-8-414 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-414.

23-5-125. En. Sec. 12, Ch. 115, L. 1907; Sec. 8427, Rev. C. 1907; re-en. Sec. 11170, R.C.M. 1921; re-en. Sec. 11170, R.C.M. 1935; Sec. 94-2415, R.C.M. 1947; redes. 94-8-415 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-415.

23-5-126. En. Sec. 13, Ch. 115, L. 1907; Sec. 8428, Rev. C. 1907; re-en. Sec. 11171, R.C.M. 1921; re-en. Sec. 11171, R.C.M. 1935; Sec. 94-2416, R.C.M. 1947; redes. 94-8-416 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-416.

23-5-127. En. Sec. 14, Ch. 115, L. 1907; Sec. 8429, Rev. C. 1907; re-en. Sec. 11172, R.C.M. 1921; Cal. Pen. C. Sec. 337; re-en. Sec. 11172, R.C.M. 1935; Sec. 94-2417, R.C.M. 1947; redes. 94-8-417 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-417.

23-5-128. Distributor's license — fees. (1) It is a misdemeanor for a person to conduct business as a distributor without first obtaining a distributor's license from the department.

(2) Except as provided in subsection (6), the department shall charge an annual license fee of $1,000 for issuing or renewing a distributor's license. The department shall retain the fee for administrative purposes.

(3) A distributor's license expires June 30 of each year, and the license fee may not be prorated.

(4) Except as provided in subsection (6), the department may charge an additional, one-time license application processing fee to cover the actual cost of processing the original license. The department shall refund any amount of the application processing fee not needed to reimburse the department for actual costs or shall collect an amount sufficient to reimburse the department for actual costs not completely covered by the initial fee charged.

(5) The department shall retain for administrative purposes the license and application processing fees collected under this section.

(6) The department may waive the license fee provided for in subsection (2) if the applicant is licensed as a manufacturer or route operator and may waive the application processing fee provided for in subsection (4) if the applicant is licensed as a manufacturer, route operator, or operator.

History: En. Sec. 14, Ch. 626, L. 1993.

23-5-129. Route operator's license — fees. (1) It is a misdemeanor for a person to conduct business as a route operator without first obtaining a route operator's license from the department.

(2) Except as provided in subsection (6), the department shall charge an annual license fee of $1,000 for issuing or renewing a route operator's license. The department shall retain the fee for administrative purposes.

(3) A route operator's license expires June 30 of each year, and the license fee may not be prorated.

(4) Except as provided in subsection (6), the department may charge an additional, one-time license application processing fee to cover the actual cost of processing the original license. The department shall refund any amount of the application processing fee not needed to reimburse the department for actual costs or shall collect an amount sufficient to reimburse the department for actual costs not completely covered by the initial fee charged.

(5) The department shall retain for administrative purposes the license and application processing fees collected under this section.

(6) The department may waive the license fee provided for in subsection (2) if the applicant is licensed as a manufacturer or distributor and may waive the application processing fee provided for in subsection (4) if the applicant is licensed as a manufacturer, distributor, or operator.

History: En. Sec. 15, Ch. 626, L. 1993.

23-5-130. Allowable compensation for route operator. The compensation that a licensed route operator may receive for leasing a video gambling machine to a licensed operator is limited to a set fee or a percentage of gross machine income, or both a set fee and percentage amount. The route operator may not assume responsibility for any expenses of the operator's business except for expenses associated with:

(1) paying video gambling machine permit fees and taxes;

(2) conducting video gambling machine promotional activities;

(3) maintaining and repairing video gambling machines;

(4) supplying funds to allow an operator to exchange a player's money for other coin or currency for operating a video gambling machine and to pay out prizes won by players;

(5) providing accounting and recordkeeping services for video gambling machines; and

(6) other activities, if allowed by department rule.

History: En. Sec. 16, Ch. 626, L. 1993.

Compiler's Comments

Applicability: Section 25, Ch. 626, L. 1993, provided: "[Section 16] [23-5-130] applies to agreements entered into after October 1, 1993."

23-5-131. Losses at illegal gambling may be recovered in civil action. A person, or his dependent or guardian, who, by playing or betting at an illegal gambling device or illegal gambling enterprise, loses money, property, or any other thing of value and pays and delivers it to another person connected with the operation or conduct of the illegal gambling device or illegal gambling enterprise, within 1 year following his loss, may:

(1) bring a civil action in a court of competent jurisdiction to recover the loss;

(2) recover the costs of the civil action and exemplary damages of no less than $500 and no more than $5,000; and

(3) join as a defendant any person having an interest in the illegal gambling device or illegal gambling enterprise.

History: En. Sec. 15, Ch. 115, L. 1907; Sec. 8430, Rev. C. 1907; re-en. Sec. 11173, R.C.M. 1921; re-en. Sec. 11173, R.C.M. 1935; Sec. 94-2418, R.C.M. 1947; redes. 94-8-418 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-418; amd. Sec. 13, Ch. 642, L. 1989.

Cross-References

Exemplary damages allowed, 27-1-221.

Tort liability for willful acts, Title 27, ch. 1, part 7.

23-5-132. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 16, Ch. 115, L. 1907; Sec. 8431, Rev. C. 1907; re-en. Sec. 11174, R.C.M. 1921; re-en. Sec. 11174, R.C.M. 1935; Sec. 94-2419, R.C.M. 1947; redes. 94-8-419 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-419.

23-5-133. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 17, Ch. 115, L. 1907; Sec. 8432, Rev. C. 1907; re-en. Sec. 11175, R.C.M. 1921; re-en. Sec. 11175, R.C.M. 1935; Sec. 94-2420, R.C.M. 1947; redes. 94-8-420 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-420.

23-5-134. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 18, Ch. 115, L. 1907; Sec. 8433, Rev. C. 1907; re-en. Sec. 11176, R.C.M. 1921; re-en. Sec. 11176, R.C.M. 1935; Sec. 94-2421, R.C.M. 1947; redes. 94-8-421 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-421(part).

23-5-135. Discharge of defendant. (1) A person against whom a civil action is brought as provided in 23-5-131 may move to have the action against him dismissed if he has repaid to the person who suffered the loss or his dependent the gambling loss, the costs of bringing the civil action, and the exemplary damages agreed upon by the parties or assessed by the court.

(2) A civil action brought to recover gambling losses does not bar or interfere with another proceeding or action, whether criminal, civil, or administrative, that may be brought under the laws of the state.

History: En. Sec. 18, Ch. 115, L. 1907; Sec. 8433, Rev. C. 1907; re-en. Sec. 11176, R.C.M. 1921; re-en. Sec. 11176, R.C.M. 1935; Sec. 94-2421, R.C.M. 1947; redes. 94-8-421 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-421(part); amd. Sec. 14, Ch. 642, L. 1989.

23-5-136. Injunction and other remedies. (1) If a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through 8 of this chapter or a rule or order of the department, the department may:

(a) upon clear and convincing evidence, issue a temporary order to cease and desist from the gambling activity, act, or practice for a period not to exceed 60 days;

(b) following notice and an opportunity for hearing, and with the right of judicial review, under the Montana Administrative Procedure Act:

(i) issue a permanent order to cease and desist from the act or practice, which order remains in effect pending judicial review;

(ii) place a licensee on probation;

(iii) suspend for a period not to exceed 180 days a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(iv) revoke a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(v) impose a civil penalty not to exceed $10,000 for each violation, whether or not the person is licensed by the department; and

(vi) impose any combination of the penalties contained in this subsection (1)(b); and

(c) bring an action in district court for relief against the act or practice. The department may not be required to post a bond. On proper showing, the court may:

(i) issue a restraining order, a temporary or permanent injunction, or other appropriate writ;

(ii) suspend or revoke a license or permit; and

(iii) appoint a receiver or conservator for the defendant or the assets of the defendant.

(2) The department may issue a warrant for distraint against an operator who fails to pay a civil penalty imposed under subsection (1) or a tax imposed under 23-5-409 or 23-5-610. The department may issue the warrant for the amount of the unpaid penalty or for the amount of the unpaid tax, plus penalty and accumulated interest on the tax, and shall follow the procedures provided in 15-1-701 through 15-1-708.

(3) (a) A civil penalty imposed under this section must be collected by the department and distributed as provided in 23-5-123. The local government portion of the penalty payment is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

(b) If a person fails to pay the civil penalty, the amount due is a lien on the person's licensed premises and gambling devices in the state and may be recovered by the department in a civil action.

History: En. Sec. 8, Ch. 642, L. 1989; amd. Sec. 27, Ch. 647, L. 1991; amd. Sec. 9, Ch. 398, L. 1993; amd. Sec. 3, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 398 in (1) extended reference from parts 1 through 6 to parts 1 through 8.

Chapter 626 in (1)(a), at beginning, inserted "upon clear and convincing evidence".

23-5-137. Judicial review. (1) (a) A person aggrieved by a final order of the department may obtain a review of the order in district court by filing with the court, within 30 days after entry of the final order, a written petition requesting that the order be modified or set aside in whole or in part.

(b) A copy of the petition must be served upon the department at the same time. When the department receives the copy of the petition, it shall certify and file in court a copy of the filing, testimony, and other evidence upon which the final order was entered by the department. When these have been filed with the court, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the final order in whole or in part. A temporary cease and desist order from the department may remain in effect until a hearing has been held and a final order has been issued pursuant to 23-5-136.

(2) (a) The review must be conducted by the district court without a jury and must be confined to the record. In a case of alleged irregularity in procedure before the department not shown in the record, proof may be taken by the court. The court, upon request, shall hear oral argument and receive written briefs.

(b) The court may not substitute its judgment for that of the department as to the weight of the evidence on questions of fact. The court may affirm the decision of the department or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(i) in violation of a constitutional or statutory provision;

(ii) in excess of the statutory authority of the department;

(iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(vii) inadequate because findings of fact, upon issues essential to the decision, were requested but not made.

(3) The commencement of proceedings under this section, unless specifically ordered by the court, may not operate as a stay of the department's final order.

History: En. Sec. 12, Ch. 642, L. 1989.

23-5-138. Evidence in administrative proceedings. When conducting an administrative proceeding under parts 1 through 8 of this chapter, the department may consider hearsay evidence approved by the hearing examiner in a prehearing conference at which a determination is made that the evidence possesses sufficient guaranties of trustworthiness and does not involve a question of the credibility of a witness or of the credibility of a witness's subjective observations or analysis.

History: En. Sec. 4, Ch. 626, L. 1993.

23-5-139 and 23-5-140 reserved.

23-5-141 through 23-5-144. Repealed. Sec. 68, Ch. 642, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

23-5-141. En. Sec. 20, Ch. 115, L. 1907; Sec. 8435, Rev. C. 1907; re-en. Sec. 11178, R.C.M. 1921; re-en. Sec. 11178, R.C.M. 1935; Sec. 94-2423, R.C.M. 1947; redes. 94-8-423 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-423.

23-5-142. En. Sec. 21, Ch. 115, L. 1907; Sec. 8436, Rev. C. 1907; re-en. Sec. 11179, R.C.M. 1921; re-en. Sec. 11179, R.C.M. 1935; Sec. 94-2424, R.C.M. 1947; redes. 94-8-424 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 23, Ch. 508, L. 1977; R.C.M. 1947, 94-8-424.

23-5-143. En. Sec. 19, Ch. 115, L. 1907; Sec. 8434, Rev. C. 1907; re-en. Sec. 11177, R.C.M. 1921; re-en. Sec. 11177, R.C.M. 1935; Sec. 94-2422, R.C.M. 1947; redes. 94-8-422 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 22, Ch. 508, L. 1977; R.C.M. 1947, 94-8-422.

23-5-144. En. Sec. 7, Ch. 115, L. 1907; re-en. Sec. 8422, Rev. C. 1907; re-en. Sec. 11165, R.C.M. 1921; re-en. Sec. 11165, R.C.M. 1935; Sec. 94-2409, R.C.M. 1947; redes. 94-8-409 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-409.

23-5-145 through 23-5-150 reserved.

23-5-151. Gambling prohibited. Except as specifically authorized by statute, all forms of public gambling, lotteries, and gift enterprises are prohibited.

History: En. Sec. 600, Pen. C. 1895; amd. Sec. 1, p. 80, L. 1897; amd. Secs. 1, 2 and 3, pp. 166, 167, L. 1901; amd. Sec. 1, Ch. 115, L. 1907; re-en. Sec. 8416, Rev. C. 1907; amd.

Sec. 1, Ch. 86, L. 1917; re-en. Sec. 11159, R.C.M. 1921; Cal. Pen. C. Sec. 330; re-en. Sec. 11159, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1937; Sec. 94-2401, R.C.M. 1947; redes. 94-8-401 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 19, Ch. 508, L. 1977; R.C.M. 1947, 94-8-401; amd. Sec. 15, Ch. 642, L. 1989; Sec. 23-5-102, MCA 1987; redes. 23-5-151 by Code Commissioner, 1989.

Cross-References

Discipline of highway patrol officer for off-duty presence where illegal gambling is conducted, 44-1-612.

23-5-152. Possession of illegal gambling device or conducting illegal gambling enterprise prohibited — exceptions. (1) Except as provided in 23-5-153 and subsections (2) through (4) of this section, it is a misdemeanor punishable under 23-5-161 for a person to purposely or knowingly:

(a) have in the person's possession or under the person's control or permit to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by or under the person's management or control an illegal gambling device; or

(b) operate an illegal gambling enterprise.

(2) Subsection (1) does not apply to a public officer or to a person coming into possession of an illegal gambling device in or by reason of the performance of an official duty and holding it to be disposed of according to law.

(3) (a) The department may adopt rules to license persons to manufacture gambling devices that are not legal for public play in the state and are manufactured only for export from the state.

(b) A person may not manufacture an illegal gambling device for export from the state without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing the license.

(c) A person licensed under subsection (3) may bring an illegal gambling device into the state if:

(i) the illegal gambling device contains a component that will be used by the licensee to manufacture an illegal gambling device for export from the state; or

(ii) the illegal gambling device will be reconditioned, refurbished, repaired, or otherwise substantially modified in preparation for export from the state; and

(iii) the illegal gambling device will be exported from the state; and

(iv) the licensee has notified the department and received authorization from the department to bring the illegal gambling device into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(4) An illegal gambling device may be possessed or located for display purposes only and not for operation:

(a) in a public or private museum; or

(b) in any other public place if the device has been made permanently inoperable for purposes of conducting a gambling activity.

History: En. Sec. 2, Ch. 115, L. 1907; Sec. 8417, Rev. C. 1907; re-en. Sec. 11160, R.C.M. 1921; re-en. Sec. 11160, R.C.M. 1935; Sec. 94-2404, R.C.M. 1947; redes. 94-8-404 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 20, Ch. 508, L. 1977; R.C.M. 1947, 94-8-404; amd. Sec. 21, Ch.

642, L. 1989; Sec. 23-5-103, MCA 1987; redes. 23-5-152 by Code Commissioner, 1989; amd. Sec. 1, Ch. 211, L. 1991; amd. Sec. 5, Ch. 647, L. 1991; amd. Sec. 5, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 626 in (3)(b), after "may not manufacture", deleted "or possess"; inserted (3)(c)(i) through (3)(c)(iii) specifying conditions under which illegal gambling devices may be brought into state; in (3)(c)(iv), at beginning, inserted "the licensee has notified" and after "department" inserted "to bring the illegal gambling device into the state" and in second sentence substituted "licensee" for "person"; and made minor changes in style.

23-5-153. Possession and sale of antique slot machines. (1) For the purposes of this section, an antique slot machine is a mechanically or electronically operated slot machine that at any present time is more than 25 years old.

(2) Except as provided in subsection (3), an antique slot machine may be possessed, located, and operated only in a private residential dwelling.

(3) (a) An antique slot machine may be possessed or located for purposes of display only and not for operation in any public museum owned and operated by the state, a county, or a city.

(b) A licensed manufacturer-distributor or a person licensed under subsection (4) may possess antique slot machines for purposes of commercially selling or otherwise supplying the machines.

(4) A person other than a licensed manufacturer-distributor may not sell more than three antique slot machines in a 12-month period without first obtaining from the department an annual license for selling the machines. The fee for the license is $50 a year. The fee must be retained by the department for administrative purposes. The department may not issue a license under this subsection to a licensed operator.

(5) A person or entity legally possessing a slot machine under subsection (2) or (3) may sell or otherwise supply a machine to another person or entity who may legally possess a slot machine.

(6) An antique slot machine may not be operated for any commercial or charitable purpose.

History: En. Sec. 1, Ch. 197, L. 1949; Sec. 94-2429, R.C.M. 1947; redes. 94-8-428 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-428; (2) thru (5)En. Sec. 1, Ch. 503, L. 1983; amd. Sec. 2, Ch. 503, L. 1983; amd. Sec. 1, Ch. 364, L. 1989; amd. Secs. 22, 73, Ch. 642, L. 1989; Sec. 23-5-104, MCA 1987; redes. 23-5-153 by Code Commissioner, 1989; amd. Sec. 28, Ch. 647, L. 1991.

Cross-References

Video draw poker and keno machines, Title 23, ch. 5, part 6.

23-5-154. Soliciting participation in illegal gambling activity prohibited. A person who purposely or knowingly advertises for or solicits another person to participate in an illegal gambling enterprise or use an illegal gambling device is guilty of a misdemeanor and is punishable under 23-5-161.

History: En. Sec. 5, Ch. 115, L. 1907; Sec. 8420, Rev. C. 1907; re-en. Sec. 11163, R.C.M. 1921; Cal. Pen. C. Sec. 318; re-en. Sec. 11163, R.C.M. 1935; Sec. 94-2407, R.C.M. 1947; redes. 94-8-407 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-407; amd. Sec. 17, Ch. 642, L. 1989; Sec. 23-5-108, MCA 1987; redes. 23-5-154 by Code Commissioner, 1989; amd. Sec. 29, Ch. 647, L. 1991.

Cross-References

Classification of offenses — definition of "felony" and "misdemeanor", 45-1-201, 45-2-101.

23-5-155. Counterfeiting or defacing documents — penalty. (1) A person commits the offense of counterfeiting or defacing a document when he purposely or knowingly counterfeits, alters, or wrongfully displays a seal, decal, license, identification number or device, or other document issued by the department.

(2) A person convicted of the offense of counterfeiting or defacing a document is guilty of a felony and must be punished in accordance with 23-5-162.

History: En. Sec. 16, Ch. 642, L. 1989.

23-5-156. Obtaining anything of value by fraud or operation of illegal gambling device or enterprise. (1) A person who in an activity involving gambling obtains money, property, or anything of value that does not exceed $300 in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a misdemeanor and is punishable as provided in 23-5-161.

(2) A person who in an activity involving gambling obtains money, property, or anything of value that exceeds $300 in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a felony and is punishable as provided in 23-5-162.

History: En. Sec. 18, Ch. 642, L. 1989; amd. Sec. 30, Ch. 647, L. 1991.

23-5-157. Gambling on cash basis. (1) In every gambling activity, except raffles as authorized in 23-5-413, the consideration paid for the chance to play must be made in cash. A check or credit card may be used to obtain cash to participate in a gambling activity. A participant shall present the cash needed to play the game as the game is being played. A check, credit card, note, IOU, or other evidence of indebtedness may not be offered or accepted as part of the price of participation in the gambling activity or as payment of a debt incurred in the gambling activity.

(2) A person who violates this section is guilty of:

(a) a misdemeanor and must be punished in accordance with 23-5-161; or

(b) a felony upon conviction of a third or subsequent offense and must be punished in accordance with 23-5-162.

History: En. Sec. 19, Ch. 642, L. 1989; amd. Sec. 10, Ch. 398, L. 1993; amd. Sec. 6, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 398 in first sentence of (1), before "cash", inserted "made in", inserted second sentence authorizing use of check or credit card to obtain cash to gamble, in third sentence substituted "cash" for "money", and deleted last sentence that read: "The use of a check or credit card to pay for other goods or services in the establishment or to obtain cash is not a violation of this section"; and made minor changes in style.

Chapter 626 inserted (2)(b) prescribing punishment for felony conviction; and made minor changes in style.

23-5-158. Minors not to participate — penalty — exception. (1) Except as provided in subsection (3), a person may not purposely or knowingly allow a person under 18 years of age to participate in a gambling activity. A person who violates this subsection is guilty of a misdemeanor and must be punished in accordance with 23-5-161.

(2) Except as provided in subsection (3), a person under 18 years of age may not purposely or knowingly participate in a gambling activity. A person who violates this subsection is subject to a civil penalty not to exceed $50 if the proceedings for violating this subsection are held in justice's, municipal, or city court. If the proceedings are held in youth court, the offender must be treated as an alleged youth in need of supervision, as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

(3) A person under 18 years of age may sell or buy tickets for or receive prizes from a raffle conducted in compliance with 23-5-413 if proceeds from the raffle, minus administrative expenses and prizes paid, are used to support charitable activities, scholarships or educational grants, or community service projects.

History: En. Sec. 20, Ch. 642, L. 1989; amd. Sec. 31, Ch. 647, L. 1991; amd. Sec. 7, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 626 in (1) substituted "subsection (3)" for "subsection (2)"; and inserted (2) prohibiting minors from participating in gambling activity.

23-5-159. Illegal sale, assignment, lease, or transfer of license — penalty. A licensee who purposely or knowingly sells, assigns, leases, or transfers a license or permit in violation of 23-5-110 is guilty of a misdemeanor punishable in accordance with 23-5-161.

History: En. Sec. 34, Ch. 647, L. 1991.

23-5-160. Shaking dice for a drink or music or in a shake-a-day game. (1) It is legal for a customer in an establishment licensed for the sale of alcoholic beverages to be consumed on the premises to:

(a) shake or choose one or more dice, alone or with an owner or employee of the establishment, to determine whether the customer or the establishment shall pay for the customer's drink or to determine whether the customer or the establishment shall immediately pay a predetermined amount of money, not to exceed $2, for music from a jukebox in the establishment; or

(b) play the dice game commonly known as shake-a-day, in which a customer may once each day pay an amount of money predetermined by the establishment, but not more than 50 cents, and shake a number of dice predetermined by the establishment in an attempt to roll certain combinations simulating poker hands predetermined by the establishment. If one of the combinations is rolled, the customer may win merchandise or a portion or all of the money paid to play the game since the last winning combination was rolled. The establishment may, before a game begins, limit the amount that will be won and use the remaining money played on that game to start the pot for the next game, thus enhancing the incentive to play the next game in the early stages of the next game. All money paid to play games must be paid out as winnings. An establishment may offer to the public more than one shake-a-day game at any given time.

(2) Nothing in this section authorizes the dice game of craps or any other dice game not specifically described in this section.

History: En. Sec. 1, Ch. 709, L. 1991; amd. Sec. 8, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 626 in (1)(b), near middle, after "customer may win", inserted "merchandise or a portion or" and inserted last sentence authorizing offer of more than one game; and made minor changes in style.

23-5-161. Criminal liabilities — misdemeanor. A person who purposely or knowingly violates a provision of parts 1 through 8 of this chapter, the punishment of which is for a misdemeanor, shall upon conviction of a first offense be fined not more than $500. Upon a second conviction within 5 years of a first conviction, a person shall be fined not more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. Upon a third conviction within 5 years of a second conviction, a person shall be fined not more than $10,000 or imprisoned in the county jail for not more than 1 year, or both. Upon a fourth conviction within 5 years of a third conviction, a person shall be fined not more than $10,000 or imprisoned in the county jail for not more than 1 year, or both, and the department shall revoke all licenses and permits the person holds under parts 1 through 8 of this chapter and the person is forever barred from receipt of any license or permit under this chapter. When 5 years have passed following a conviction, the record of that conviction may be made available only to criminal justice agencies or upon court order.

History: En. Sec. 23, Ch. 642, L. 1989; amd. Sec. 11, Ch. 398, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 398 in two places extended reference from parts 1 through 6 to parts 1 through 8; and made minor changes in style.

23-5-162. Criminal liabilities — felony. (1) A person who purposely or knowingly violates a provision of parts 1 through 8 of this chapter, the punishment for which is a felony, may upon conviction be fined not more than $50,000 or imprisoned for not more than 10 years, or both, for each violation.

(2) In addition to any penalty imposed under subsection (1), the department shall revoke all licenses or permits issued to the person under parts 1 through 8 of this chapter and may not issue the person another license or permit under parts 1 through 8 of this chapter.

History: En. Sec. 24, Ch. 642, L. 1989; amd. Sec. 32, Ch. 647, L. 1991; amd. Sec. 12, Ch. 398, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 398 in three places extended reference from parts 1 through 6 to parts 1 through 8.

23-5-163 reserved.

23-5-164. Payroll checks — promotional activities prohibited. A licensee may not offer financial incentives or conduct promotional games of chance in connection with an offer to cash payroll checks on the premises.

History: En. Sec. 23, Ch. 626, L. 1993.

23-5-165. Fishing derbies and wagering on natural occurrences. (1) The following are authorized gambling activities:

(a) a fishing derby in which two or more persons pay valuable consideration for an opportunity to win a prize for the species, size, weight, or otherwise specified fish caught in a fishing event; and

(b) wagering on the outcome of a natural occurrence in which two or more persons pay valuable consideration for an opportunity to win a prize by most accurately predicting the date or time of an event resulting from a climatological or meteorological activity.

(2) Except as provided in subsection (3), all consideration paid to participate in a gambling activity authorized in subsection (1) must be paid to the winners.

(3) A nonprofit organization sponsoring a gambling activity authorized in subsection (1) may retain up to 50% of the total amount paid to participate.

(4) This section does not apply to a gambling activity conducted under chapter 4 or chapter 5, part 2 or 3, of this title.

History: **En. Sec. 55, Ch. 647, L. 1991.**

23-5-166 through 23-5-170 reserved.

23-5-171. Authority of local governments to regulate gambling. (1) A local government may not license or regulate a form of gambling authorized by parts 1 through 8 of this chapter or assess or charge any fees or taxes unless specifically authorized by statute.

(2) An incorporated city or town may enact an ordinance or resolution zoning certain areas within its incorporated limits in which gambling is prohibited.

(3) A county may enact a resolution zoning certain areas in the county, not within an incorporated city or town, in which gambling is prohibited.

(4) A county or incorporated city or town may not restrict the number of licenses that the department may issue.

History: **En. Sec. 4, Ch. 642, L. 1989; amd. Sec. 13, Ch. 398, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 398 in (1) extended reference from parts 1 through 6 to parts 1 through 8.

23-5-172. Prosecution. The county attorney of the county in which a violation of a provision of parts 1 through 8 of this chapter occurs shall prosecute all gambling actions within the jurisdiction of the department. However, if the county attorney declines prosecution or fails to commence an action within a reasonable time, the attorney general may initiate and conduct the prosecution on behalf of the state.

History: **En. Sec. 25, Ch. 642, L. 1989; amd. Sec. 14, Ch. 398, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 398 extended reference from parts 1 through 6 to parts 1 through 8.

23-5-173 through 23-5-175 reserved.

23-5-176. Qualifications for licensure. (1) A person who the department determines is qualified to receive a license under the provisions of this chapter may, based on information available to, required by, or supplied to the department under department rules, be issued a state gambling license.

(2) Except as provided in subsection (4), the department shall issue a license unless the department can demonstrate that the applicant:

(a) is a person whose prior financial or other activities or criminal record:

(i) poses a threat to the public interest of the state;

(ii) poses a threat to the effective regulation and control of gambling; or

(iii) creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the carrying on of the business and financial arrangements incidental to gambling;

(b) has been convicted of a felony offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense; or

(c) is receiving a substantial amount of financing for the proposed operation from an unsuitable source. A lender or other source of money or credit that the department finds to meet the provisions of subsection (2)(a) may be considered an unsuitable source.

(3) The provisions of 37-1-203 and 37-1-205 do not apply to licensing determinations made under this section.

(4) The department may deny a license or permit to an applicant who has falsified a license or permit application. If the falsification is determined after the license or permit has been issued, the department may revoke the license or permit.

History: En. Sec. 10, Ch. 642, L. 1989; amd. Sec. 33, Ch. 647, L. 1991.

23-5-177. Operator of gambling establishment — license — fee. (1) It is a misdemeanor for a person who is not licensed by the department as an operator to make available to the public for play a gambling device or gambling enterprise for which a permit must be obtained from the department.

(2) To obtain an operator's license, a person shall submit to the department:

(a) a completed operator's license application on a form prescribed and furnished by the department;

(b) any other relevant information requested by the department; and

(c) a license application processing fee, as required in subsection (8).

(3) Before issuing an operator's license, the department shall approve, in accordance with 23-5-117, the premises in which the gambling activity is to be conducted.

(4) Except as provided in 23-5-117, regardless of the number of on-premises alcoholic beverage licenses issued for a premises, the department may issue only one operator's license for the premises.

(5) An operator's license must include the following information:

(a) a description of the premises upon which the gambling will take place;

(b) the operator's name;

(c) a description of each gambling device or card game table for which a permit has been issued to the operator by the department for play upon the premises, including the type of game and permit number for each game; and

(d) any other relevant information determined necessary by the department.

(6) The operator's license must be issued annually along with all other permits for gambling devices or games issued to the operator.

(7) The operator's license must be updated each time a video gambling machine, bingo, keno, or card game table permit is newly issued or the machine or game is removed from the premises.

(8) The department shall charge an applicant who has submitted an operator's license application on or after July 1, 1991, a one-time license application processing fee to cover the actual cost incurred by the department in determining whether the applicant qualifies for licensure under 23-5-176. After making its determination, the department shall refund any overpayment or charge and collect amounts sufficient to reimburse the department for any underpayment of actual costs.

(9) The operator's license must be prominently displayed upon the premises for which it is issued.

History: En. Sec. 11, Ch. 642, L. 1989; amd. Sec. 4, Ch. 473, L. 1991; amd. Sec. 6, Ch. 647, L. 1991.

Part 2

Calcutta Pools

23-5-201 through 23-5-211. Repealed. Sec. 68, Ch. 642, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

23-5-201. En. Sec. 580, Pen. C. 1895; re-en. Sec. 8406, Rev. C. 1907; re-en. Sec. 11149, R.C.M. 1921; Cal. Pen. C. Sec. 319; amd. Sec. 1, Ch. 36, L. 1935; re-en. Sec. 11149, R.C.M. 1935; Sec. 94-3001, R.C.M. 1947; redes. 94-8-301 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 17, Ch. 508, L. 1977; R.C.M. 1947, 94-8-301.

23-5-202. En. Sec. 2, Ch. 36, L. 1935; re-en. Sec. 11149.1, R.C.M. 1935; Sec. 94-3002, R.C.M. 1947; redes. 94-8-302 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 18, Ch. 508, L. 1977; R.C.M. 1947, 94-8-302; amd. Sec. 21, Ch. 669, L. 1985.

23-5-203. En. Sec. 581, Pen. C. 1895; re-en. Sec. 8407, Rev. C. 1907; re-en. Sec. 11150, R.C.M. 1921; re-en. Sec. 11150, R.C.M. 1935; Sec. 94-3003, R.C.M. 1947; redes. 94-8-303 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-303.

23-5-204. En. Sec. 582, Pen. C. 1895; re-en. Sec. 8408, Rev. C. 1907; re-en. Sec. 11151, R.C.M. 1921; Cal. Pen. C. Sec. 321; re-en. Sec. 11151, R.C.M. 1935; Sec. 94-3004, R.C.M. 1947; redes. 94-8-304 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-304.

23-5-205. En. Sec. 583, Pen. C. 1895; re-en. Sec. 8409, Rev. C. 1907; re-en. Sec. 11152, R.C.M. 1921; Cal. Pen. C. Sec. 322; re-en. Sec. 11152, R.C.M. 1935; Sec. 94-3005, R.C.M. 1947; redes. 94-8-305 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-305.

23-5-206. En. Sec. 584, Pen. C. 1895; re-en. Sec. 8410, Rev. C. 1907; re-en. Sec. 11153, R.C.M. 1921; Cal. Pen. C. Sec. 323; re-en. Sec. 11153, R.C.M. 1935; Sec. 94-3006, R.C.M. 1947; redes. 94-8-306 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-306.

23-5-207. En. Sec. 585, Pen. C. 1895; re-en. Sec. 8411, Rev. C. 1907; re-en. Sec. 11154, R.C.M. 1921; Cal. Pen. C. Sec. 324; re-en. Sec. 11154, R.C.M. 1935; Sec. 94-3007, R.C.M. 1947; redes. 94-8-307 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-307.

23-5-208. En. Sec. 586, Pen. C. 1895; re-en. Sec. 8412, Rev. C. 1907; re-en. Sec. 11155, R.C.M. 1921; Cal. Pen. C. Sec. 325; re-en. Sec. 11155, R.C.M. 1935; Sec. 94-3008, R.C.M. 1947; redes. 94-8-308 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-308.

23-5-209. En. Sec. 587, Pen. C. 1895; re-en. Sec. 8413, Rev. C. 1907; re-en. Sec. 11156, R.C.M. 1921; Cal. Pen. C. Sec. 326; re-en. Sec. 11156, R.C.M. 1935; Sec. 94-3009, R.C.M. 1947; redes. 94-8-309 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-309.

23-5-210. En. Sec. 588, Pen. C. 1895; re-en. Sec. 8414, Rev. C. 1907; re-en. Sec. 11157, R.C.M. 1921; re-en. Sec. 11157, R.C.M. 1935; Sec. 94-3010, R.C.M. 1947; redes. 94-8-310 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-310.

23-5-211. En. Sec. 589, Pen. C. 1895; re-en. Sec. 8415, Rev. C. 1907; re-en. Sec. 11158, R.C.M. 1921; re-en. Sec. 11158, R.C.M. 1935; Sec. 94-3011, R.C.M. 1947; redes. 94-8-311 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-311.

23-5-212 through 23-5-220 reserved.

23-5-221. Definition. As used in this part, "Calcutta pool" means a form of auction pool conducted by an organization authorized by the department. The Calcutta pool must be an auction pool in which:

(1) a person's wager is equal to his bid;

(2) the proceeds from the pool, minus administrative costs and prizes paid, are contributed to a charitable or nonprofit corporation, association, or cause;

(3) the rules of the pool are publicly posted;

(4) no more than one wager for each competitor is allowed;

(5) at least 50% of the total pool is paid out in prizes;

(6) persons may not bid or wager money on any elementary school or high school sports event; and

(7) the underlying event has more than two entrants.

History: En. Sec. 1, Ch. 550, L. 1987; amd. Sec. 60, Ch. 642, L. 1989; Sec. 23-5-1101, MCA 1987; redes. 23-5-221 by Code Commissioner, 1989.

23-5-222. Calcutta pools authorized. It is hereby lawful to conduct or participate in a Calcutta pool as defined in 23-5-221.

History: En. Sec. 2, Ch. 550, L. 1987; Sec. 23-5-1102, MCA 1987; redes. 23-5-222 by Code Commissioner, 1989.

23-5-223. Penalty. A person who violates a provision of this part is guilty of a misdemeanor punishable pursuant to 23-5-161.

History: En. Sec. 5, Ch. 550, L. 1987; amd. Sec. 61, Ch. 642, L. 1989; Sec. 23-5-1105, MCA 1987; redes. 23-5-223 by Code Commissioner, 1989.

23-5-224. Construction. Nothing in this part may be construed to permit a person to conduct a race meet or to bet on a race of a licensed race meet in violation of 23-4-201 and 23-4-301.

History: En. Sec. 6, Ch. 550, L. 1987; Sec. 23-5-1106, MCA 1987; redes. 23-5-224 by Code Commissioner, 1989.

Part 3

Card Games Act

23-5-301. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-701 by Sec. 1, Ch. 293, L. 1974; R.C.M. 1947, 62-701.

23-5-302. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-702 by Sec. 2, Ch. 293, L. 1974; R.C.M. 1947, 62-702.

23-5-303. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-714 by Sec. 14, Ch. 293, L. 1974; R.C.M. 1947, 62-714.

23-5-304 and 23-5-305 reserved.

23-5-306. Live card game table — permit — fees — disposition of fees. (1) (a) A person who has been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for consumption on the premises may be granted an annual permit for the placement of live card game tables.

(b) The department may issue an annual permit for the placement of live card game tables to a person operating a premises not licensed to sell alcoholic beverages for consumption on the premises if:

(i) one or more live card game tables were legally operated on the premises on January 15, 1989;

(ii) the premises were licensed on January 15, 1989, to sell food, cigarettes, or any other consumable product;

(iii) the person has been granted an operator's license under 23-5-177; and

(iv) at the time of application for the permit:

(A) the person has continuously operated a live card game table on the premises since January 15, 1989; and

(B) the natural person or persons who own the business operated on the premises are the same as on January 15, 1989.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator's premises may not be prorated and must be:

(a) $250 for the first table; and

(b) $500 for each additional table.

(3) The department shall retain for administrative purposes $100 of the fee collected under this part for each live card game table.

(4) The department shall forward on a quarterly basis the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

History: En. Sec. 29, Ch. 642, L. 1989; amd. Sec. 1, Ch. 18, Sp. L. January 1992; amd. Sec. 9, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 626 inserted (1)(b) authorizing issuance of annual permit for live card games; in (1)(b)(i), after "January 15, 1989", deleted "and the premises were not on that date licensed under 16-4-401(2) but"; in (1)(b)(ii), after "other consumable product", deleted "an operator's license and an annual permit for the placement of live card game tables may be granted to the person who legally operated the premises on January 15, 1989"; inserted (1)(b)(iii) and (1)(b)(iv) specifying other conditions for issuing annual permit; and made minor changes in style.

23-5-307. Live card game tables — hours of play — restriction. Live card game tables must be closed for play between the hours of 2 a.m. and 8 a.m. each day. However, in the jurisdiction of a local government where a game is played, the local government may adopt an ordinance allowing play between 2 a.m. and 8 a.m.

History: En. Sec. 32, Ch. 642, L. 1989.

23-5-308. Card game dealers — license. (1) Except as provided in 23-5-318, a person may not deal cards in a live card game of panguingue or poker without being licensed annually by the department.

(2) The fee for the first year in which the license is effective is $75, and the annual renewal fee is $25. The fee may not be prorated.

(3) The department shall retain for administrative purposes the license fee charged for the issuance of a dealer's license.

(4) A licensed dealer shall have on his person, and display upon request, his dealer's license when he is working as a dealer.

(5) (a) The department shall adopt rules to implement temporary licensing procedures until a permanent license is issued to a dealer.

(b) The rules must provide that:

(i) a temporary license may be obtained at the place where a person locally applies for a driver's license; and

(ii) the receipt received upon mailing by certified mail a completed license application and the fee required under subsection (2), return receipt requested, constitutes a temporary license.

(c) The department may not assess a fee for the temporary license.

History: **En. Sec. 28, Ch. 642, L. 1989; amd. Sec. 35, Ch. 647, L. 1991; amd. Sec. 2, Ch. 317, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 317 at beginning of (1) inserted exception clause. Amendment effective April 12, 1993.

23-5-309. Requirements for conducting card games. (1) Except as provided in 23-5-310, 23-5-317, and 23-5-318, a live card game must be played on a live card game table for which a permit has been issued and on the premises of a licensed operator.

(2) Except as provided in 23-5-318, a live card game of panguingue or poker must be played in the presence and under the control of a licensed dealer.

History: **En. Sec. 27, Ch. 642, L. 1989; amd. Sec. 36, Ch. 647, L. 1991; amd. Sec. 3, Ch. 317, L. 1993; amd. Sec. 15, Ch. 398, L. 1993.**

Compiler's Comments

1993 Amendments: Chapter 317 near beginning of (1), after "23-5-317", inserted "and 23-5-318"; and at beginning of (2) inserted exception clause. Amendment effective April 12, 1993.

Chapter 398 near beginning inserted "23-5-310".

23-5-310. Exemption from certain sections. A senior citizen center is exempt from 23-5-306, 23-5-308, and 23-5-309 if the center:

(1) limits participation in live card games to its members and members' guests;

(2) limits live card game activities to its main premises or place of operation; and

(3) does not operate live card games in a predominantly commercial manner.

History: **En. Sec. 2, Ch. 473, L. 1991.**

23-5-311. Authorized card games. (1) The card games authorized by this part are and are limited to the card games known as bridge, cribbage, hearts, panguingue, pinochle, pitch, poker, rummy, solo, and whist.

(2) A person may conduct or participate in a live card game or make a live card game table available for public play of a live card game only if it is specifically authorized by this part and described by department rules.

(3) This part does not apply to games simulated on electronic video gambling machines authorized under part 6 of this chapter.

History: **En. 62-703 by Sec. 3, Ch. 293, L. 1974; R.C.M. 1947, 62-703; amd. Sec. 26, Ch. 642, L. 1989.**

23-5-312. Prizes not to exceed three hundred dollars. (1) A prize for an individual live card game may not exceed the value of $300. Games may not be combined in any manner so as to increase the value of the ultimate prize awarded. Except during a tournament conducted under 23-5-317, all prizes must be awarded immediately upon completion of each hand.

(2) If a licensed operator conducts a promotional game of chance involving a live card game, the prize limit provided for in subsection (1) applies to prizes awarded as a result of the promotional game of chance.

History: En. 62-704 by Sec. 4, Ch. 293, L. 1974; R.C.M. 1947, 62-704; amd. Sec. 31, Ch. 642, L. 1989; amd. Sec. 10, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 626 in (1) inserted second sentence regarding awarding of prizes; inserted (2) regarding application of prize limit provided in subsection (1); and made minor changes in style.

23-5-313. Rules of play to be posted — rake-off approved. Rules governing the conduct of each game must be prominently posted within the sight of the players at a live card game table on the premises of a licensed operator. The rules must include notice of the maximum percentage rake-off, if any, and must require that the person taking the rake-off do so in an obvious manner.

History: En. 62-705 by Sec. 5, Ch. 293, L. 1974; R.C.M. 1947, 62-705; amd. Sec. 33, Ch. 642, L. 1989.

23-5-314. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-706 by Sec. 6, Ch. 293, L. 1974; amd. Sec. 1, Ch. 508, L. 1977; R.C.M. 1947, 62-706.

23-5-315. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-709 by Sec. 9, Ch. 293, L. 1974; amd. Sec. 4, Ch. 508, L. 1977; R.C.M. 1947, 62-709.

23-5-316. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-710 by Sec. 10, Ch. 293, L. 1974; amd. Sec. 5, Ch. 508, L. 1977; R.C.M. 1947, 62-710.

23-5-317. Tournaments. (1) Subject to the department's approval, a licensed operator who has a permit for placing at least 1 live card game table on the operator's premises may conduct up to 12 live card game tournaments a year on his premises. Each tournament may be conducted for no more than 5 consecutive days. If an operator conducts more than one tournament a year, at least 7 days must lapse between the conclusion of one tournament and the beginning of the next tournament.

(2) (a) Before the start of a tournament, the operator shall submit to the department an application for a tournament permit. The permit application must be accompanied by a $10 fee. The department shall retain the fee for administrative purposes.

(b) If a tournament is to be conducted on the premises of more than one licensed operator, each operator shall submit a permit application and processing fee. The permit is applied toward each operator's annual 12-tournament limit.

(3) Permits for placement of additional live card game tables, as provided in 23-5-306, are not required for additional tables authorized under a tournament permit.

(4) Tournament participants must be provided with a copy of the tournament rules before the start of the tournament. A copy of the rules must be posted in a conspicuous location in each area where the tournament is conducted.

(5) A person must be present on the premises during the tournament to oversee the conduct of the card games and to settle disputes among players. This person may be a dealer licensed under 23-5-308.

(6) Only a dealer licensed under 23-5-308 may deal cards at a poker or panguingue tournament.

(7) A licensed operator may charge a tournament participant an entry fee, which may include a fee to cover expenses incurred in conducting the tournament. A participant who has been eliminated from competition during the tournament may reenter the tournament by paying an additional fee if permitted to do so under tournament rules. A rake-off may not be taken during a tournament card game.

(8) The face value of the chips used does not govern the value of the pot awarded at the end of the tournament.

(9) The provisions of this part and the department rules governing live card games apply to live card games conducted as part of a tournament unless otherwise provided.

History: En. Sec. 37, Ch. 647, L. 1991; amd. Sec. 11, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 626 inserted (6) limiting to licensed dealers dealing of cards at tournament; and made minor changes in style.

23-5-318. Poker run defined — authorization — conditions. (1) For the purposes of this section, "poker run" means a gambling activity involving a live poker card game conducted in the following manner:

(a) Each person pays valuable consideration to participate.

(b) A participant travels to designated locations and obtains a playing card at each location. Cards accumulated by the participant constitute a poker hand.

(c) After each participant has accumulated the required number of cards, the participants' poker hands are ranked as described in the poker run rules to determine the winner.

(2) It is lawful to conduct or participate in a poker run subject to the following conditions:

(a) Each participant must receive a copy of the rules for conducting the poker run before the poker run begins. The rules must include:

(i) the amount of the entry fee;

(ii) the type of poker game being played and ranking of poker hands;

(iii) the value of the prizes to be awarded;

(iv) a description of the locations where playing cards may be obtained; and

(v) the date and time during which the poker run will be conducted.

(b) The rules may provide for more than one winner of the ranked hands, with each winner receiving a prize, but a prize may not exceed $300 in value.

(c) Except as provided in subsection (2)(d), all consideration paid to participate in a poker run must be expended on the prize or prizes.

(d) If a poker run is conducted by a nonprofit organization, as defined in 23-5-112, the organization may retain a portion of the total amount paid to participate.

History: En. Sec. 1, Ch. 317, L. 1993.

Compiler's Comments

Effective Date: Section 5, Ch. 317, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 12, 1993.

23-5-319 and 23-5-320 reserved.

23-5-321. Issuance of permits by local governing bodies prohibited. A city, town, or county may not issue permits for live card games or live card game tables authorized in this part.

History: En. 62-707 by Sec. 7, Ch. 293, L. 1974; amd. Sec. 2, Ch. 508, L. 1977; R.C.M. 1947, 62-707; amd. Sec. 30, Ch. 642, L. 1989.

Cross-References

Local government — no power to regulate gambling unless delegated, 7-1-112.

23-5-322. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-708 by Sec. 8, Ch. 293, L. 1974; amd. Sec. 3, Ch. 508, L. 1977; R.C.M. 1947, 62-708.

23-5-323. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-711 by Sec. 11, Ch. 293, L. 1974; R.C.M. 1947, 62-711.

23-5-324. Card room contractor's license — fee — submission of contract. (1) It is a misdemeanor for a person to enter into a contract with a licensed operator to operate one or more live card game tables on the operator's premises without obtaining a card room contractor's license from the department.

(2) The department shall charge an annual license fee of $150 for issuing or renewing a card room contractor's license. The department shall retain the fee for administrative purposes.

(3) The applicant shall submit at the time of application for a card room contractor's license a copy of the agreement entered into with the licensed operator.

History: En. Sec. 9, Ch. 647, L. 1991.

23-5-325 through 23-5-330 reserved.

23-5-331. Penalty. A person who purposely or knowingly violates or who procures, aids, or abets in a violation of this part or any ordinance, resolution, or rule adopted pursuant to this part is guilty of a misdemeanor punishable pursuant to 23-5-161.

History: En. 62-712 by Sec. 12, Ch. 293, L. 1974; R.C.M. 1947, 62-712; amd. Sec. 34, Ch. 642, L. 1989.

23-5-332. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-713 by Sec. 13, Ch. 293, L. 1974; amd. Sec. 6, Ch. 508, L. 1977; R.C.M. 1947, 62-713.

Part 4

Bingo and Raffles

23-5-401. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-715 by Sec. 1, Ch. 294, L. 1974; R.C.M. 1947, 62-715.

23-5-402. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-716 by Sec. 2, Ch. 294, L. 1974; R.C.M. 1947, 62-716(part); amd. Sec. 1, Ch. 652, L. 1987.

23-5-403. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-726 by Sec. 12, Ch. 294, L. 1974; R.C.M. 1947, 62-726.

23-5-404 reserved.

23-5-405. Authorized live bingo, keno, and raffles. (1) A person may conduct or participate in a live bingo and keno game or raffle only if it is operated pursuant to this part.

(2) This part does not apply to a game simulated on a video gambling machine authorized by part 6 of this chapter.

History: En. Sec. 35, Ch. 642, L. 1989.

23-5-406. Exempt charitable organizations and facilities. (1) (a) An organization granted an exemption under 26 U.S.C. 501(c)(3), (c)(4), (c)(8), or (c)(19):

(i) on or before January 15, 1989, is exempt from taxation and the permit fee imposed by this part;

(ii) after January 15, 1989, is exempt from taxation and one-half the permit fee imposed by this part if the organization carries on gambling activities for no more than 60 days a calendar year.

(b) An organization provided for in subsection (1)(a) shall:

(i) limit its live bingo and keno activities to its main premises or place of operations and to events at other places operated by other charitable organizations or by a government unit or entity;

(ii) comply with other statutes and rules relating to the operation of live bingo and keno; and

(iii) apply to the department for a permit to conduct charitable live bingo or keno games.

(2) A long-term care facility, as defined in 50-5-101, or a retirement home, as defined in subsection (4) of this section, that has obtained an operator's license and a permit from the department to operate live bingo or keno is exempt from taxation and the permit fee imposed by this part if the facility:

(a) limits participation in live bingo and keno games to persons using the facility and their guests;

(b) limits live bingo or keno activities to its main premises or place of operation; and

(c) complies with other statutes and rules relating to the operation of live bingo and keno.

(3) The department may revoke or suspend the permit of an organization or a facility provided for in subsection (1) or (2) if, after investigation, the department determines that the organization or facility is operating or has contracted with a nonqualified organization that is operating live bingo or keno in a predominantly commercial manner.

(4) For purposes of this section, "retirement home" means a building in which sleeping rooms without cooking facilities in each room are rented to three or more persons who are 60 years of age or older and who do not need skilled nursing care, intermediate nursing care, or personal nursing care, as defined in 50-5-101.

History: En. Sec. 36, Ch. 642, L. 1989; amd. Sec. 38, Ch. 647, L. 1991.

23-5-407. Live bingo or keno permit — fees — disposition of fees. (1) A person who has been granted an operator's license may be granted an annual permit by the department to conduct live bingo or keno games on specified premises. The permit expires June 30 of each year.

(2) The permit fee for each premises in which a live bingo or keno game is conducted is $250.

(3) The department shall retain the permit fee for administrative purposes.

History: **En. Sec. 37, Ch. 642, L. 1989; amd. Sec. 39, Ch. 647, L. 1991.**

23-5-408. Hours of play — restrictions. A live bingo or keno game must be closed for play between the hours of 2 a.m. and 8 a.m. of each day. However, in the jurisdiction of a local government where a game is played, the local government may adopt an ordinance allowing play between 2 a.m. and 8 a.m.

History: **En. Sec. 42, Ch. 642, L. 1989.**

23-5-409. Bingo and keno tax — records — distribution — statement and payment. (1) A licensee who has received a permit to operate bingo or keno games shall pay to the department a tax of 1% of the gross proceeds from the operation of each live bingo and keno game operated on his premises.

(2) A licensee shall keep a record of gross proceeds in the form the department requires. At all times during the business hours of the licensee the records must be available for inspection by the department.

(3) A licensee shall annually complete and deliver to the department a statement showing the total gross proceeds for each live keno or bingo game operated by him and the total amount due as live bingo or keno tax for the preceding year. This statement must contain any other relevant information required by the department.

(4) The department shall forward the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed game is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from taxes on live bingo or keno games located in incorporated cities and towns within the county. The tax collected under subsection (3) is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

History: **En. Sec. 38, Ch. 642, L. 1989; amd. Sec. 40, Ch. 647, L. 1991.**

23-5-410. Exemption from certain sections. A senior citizen center is exempt from 23-5-407 and 23-5-409 with respect to live bingo games if the center:

(1) limits participation in live bingo games to its members and members' guests;

(2) limits live bingo games to its main premises or place of operation; and

(3) does not operate live bingo games in a predominantly commercial manner.

History: **En. Sec. 3, Ch. 473, L. 1991.**

23-5-411. Repealed. Sec. 68, Ch. 642, L. 1989.

History: **En. 62-715.1 by Sec. 7, Ch. 508, L. 1977; R.C.M. 1947, Sec. 62-715.1.**

23-5-412. Card prices and prizes — exception. (1) Except as provided in subsection (3):

(a) the price for an individual bingo or keno card may not exceed 50 cents;

(b) a prize may not exceed the value of $100 for each individual bingo game or keno card; and

(c) it is unlawful to, in any manner, combine any bingo or keno games so as to increase the ultimate value of the prize.

(2) Bingo and keno prizes may be paid in either tangible personal property or cash.

(3) A variation of the game of keno, as approved by the department, in which a player selects three or more numbers and places a wager on various combinations of these numbers is permissible if:

(a) no more than 50 cents is wagered on each combination of numbers; and

(b) a winning combination does not pay more than $100.

(4) A player may give a keno caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won.

(5) If a licensed operator conducts a promotional game of chance involving bingo or keno, the prize limit provided for in subsection (1) applies to prizes awarded as a result of the promotional game of chance.

History: En. 62-716 by Sec. 2, Ch. 294, L. 1974; R.C.M. 1947, 62-716(part); amd. Sec. 1, Ch. 465, L. 1985; amd. Sec. 39, Ch. 642, L. 1989; amd. Sec. 41, Ch. 647, L. 1991; amd. Sec. 12, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 626 in (1)(b) substituted "game" for "award"; in (1)(c) substituted "bingo or keno games" for "awards" and substituted "prize" for "award"; and inserted (5) applying the prize limit in subsection (1) to promotional games of chance.

23-5-413. Raffle prizes — permits — exceptions. (1) (a) Except as provided in subsections (1)(b) and (1)(c), a permit must be issued by the board of county commissioners for each raffle conducted within its jurisdiction. The permit must be issued before the raffle may be conducted.

(b) If tickets for a raffle are to be sold in more than one county, a permit must be obtained only in the county where the winners of the raffle are to be determined.

(c) If a raffle is to be conducted by a religious corporation sole or a nonprofit organization, as defined in 23-5-112, a county permit is not required.

(2) Except for a religious corporation sole or a nonprofit organization, a person or organization conducting a raffle shall own all prizes to be awarded as part of the raffle before the sale of any tickets.

(3) A person who has conducted a raffle must submit an accounting to the board of county commissioners within 30 days following the completion of the raffle.

(4) The sale of raffle tickets authorized by this part is restricted to events and participants within the geographic confines of the state.

(5) The value of a prize awarded for an individual ticket for a raffle conducted by a person or an organization, other than a religious corporation

sole or a nonprofit organization, may not exceed $5,000. The prize may be in the form of cash, other intangible personal property, tangible personal property, or real property. Prizes may not be combined in any manner to increase the ultimate value of the prize awarded for each ticket.

(6) (a) A religious corporation sole or a nonprofit organization shall comply with the requirements in subsections (3) and (4).

(b) The proceeds from the sale of tickets for a raffle conducted by a religious corporation sole or a nonprofit organization may be used only for charitable purposes or to pay for prizes. Proceeds may not be used for the administrative cost of conducting the raffle.

(c) (i) The value of a prize awarded for an individual ticket for a raffle conducted by a religious corporation sole or a nonprofit organization may equal or exceed $5,000 if the prize is in the form of:

(A) tangible personal property; or

(B) real property the fair market value of which has been certified in writing by an appraiser licensed under 37-54-201.

(ii) If the value of the prize is less than $5,000, the prize may be in the form of cash, other intangible personal property, tangible personal property, or real property.

History: (1)En. 62-716 by Sec. 2, Ch. 294, L. 1974; R.C.M. 1947, 62-716(part); (2)En. Sec. 1, Ch. 510, L. 1981; amd. Sec. 1, Ch. 91, L. 1989; amd. Secs. 40, 73, Ch. 642, L. 1989; amd. Sec. 42, Ch. 647, L. 1991; amd. Sec. 1, Ch. 26, L. 1993; amd. Sec. 1, Ch. 288, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 26 in (1)(a), at beginning in exception clause, inserted reference to subsection (1)(c) and deleted former third sentence that read: "The board of county commissioners may not charge a permit fee or an investigative fee for a raffle conducted by a religious corporation sole or a nonprofit organization if the organization presents sufficient documentation of its nonprofit status"; inserted (1)(c) providing that a permit is not required for a raffle conducted by a religious corporation sole or a nonprofit organization; and substituted present (6)(a) concerning compliance with subsections (3) and (4) for former language that read: "In addition to complying with the requirements of subsections (1) through (5), a religious corporation sole or a nonprofit organization as defined in 23-5-112 shall provide the following information to the board of county commissioners when applying for a raffle permit:

(i) the cost and number of raffle tickets to be sold;

(ii) the charitable purposes the proceeds of the raffle are intended to benefit; and

(iii) the proposed prizes and their value."

Chapter 288 inserted (6)(c)(i)(B) relating to a prize of real property; and made minor changes in style.

23-5-414. Restrictions on bingo and keno. In the playing of live bingo or keno, a person who is not physically present on the premises where the game is actually conducted may not be allowed to participate as a player in the game.

History: En. 62-717 by Sec. 3, Ch. 294, L. 1974; R.C.M. 1947, 62-717; amd. Secs. 2, 3, Ch. 652, L. 1987; amd. Sec. 41, Ch. 642, L. 1989.

23-5-415 through 23-5-418. Repealed. Sec. 68, Ch. 642, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

23-5-415. En. 62-718 by Sec. 4, Ch. 294, L. 1974; R.C.M. 1947, 62-718.

23-5-416. En. 62-721 by Sec. 7, Ch. 294, L. 1974; R.C.M. 1947, 62-721.

23-5-417. En. 62-724 by Sec. 10, Ch. 294, L. 1974; amd. Sec. 10, Ch. 508, L. 1977; R.C.M. 1947, 62-724.

23-5-418. En. 62-725 by Sec. 11, Ch. 294, L. 1974; amd. Sec. 11, Ch. 508, L. 1977; R.C.M. 1947, 62-725.

23-5-419 and 23-5-420 reserved.

23-5-421. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-719 by Sec. 5, Ch. 294, L. 1974; amd. Sec. 8, Ch. 508, L. 1977; R.C.M. 1947, 62-719.

23-5-422. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-720 by Sec. 6, Ch. 294, L. 1974; amd. Sec. 9, Ch. 508, L. 1977; R.C.M. 1947, 62-720.

23-5-423. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-722 by Sec. 8, Ch. 294, L. 1974; R.C.M. 1947, 62-722.

23-5-424. Manufacturer's license for electronic bingo or keno equipment — license and processing fees. (1) A person may not assemble, produce, manufacture, or supply electronic equipment for use in conducting live bingo or keno games in this state without obtaining an annual manufacturer's license from the department.

(2) The department shall charge an annual license fee of $1,000 for issuing or renewing a manufacturer's license.

(3) A manufacturer's license expires June 30 of each year, and the license fee may not be prorated.

(4) In addition to the license fee provided for in subsection (2), the department may charge a one-time manufacturer's application fee to cover the actual cost of processing the original license. The department shall refund an overpayment or charge and collect an amount sufficient to reimburse the department for underpayment of actual costs.

(5) The department shall retain for administrative purposes the license and processing fees collected under this section.

History: En. Sec. 11, Ch. 647, L. 1991.

23-5-425. Examination and approval of electronic bingo and keno equipment — fee. (1) A licensed manufacturer shall submit to the department for examination a prototype of any electronic equipment intended for use in conducting live bingo or keno games before the equipment is used in the state.

(2) Before the equipment is examined, the manufacturer shall pay the anticipated examination costs as determined by the department. The department shall refund an overpayment or charge and collect an amount sufficient to reimburse the department for underpayment of actual costs.

(3) Upon completion of the examination, the department may approve, disapprove, or place a condition upon use of the equipment before it is made available for use in conducting live bingo or keno games.

History: En. Sec. 12, Ch. 647, L. 1991.

23-5-426. Electronic live bingo and keno equipment specifications — rules. The department shall adopt rules describing electronic live bingo and keno equipment that may be approved under 23-5-425. At a minimum, the rules must provide that the equipment use a random selection process to determine the outcome of each game.

History: En. Sec. 13, Ch. 647, L. 1991.

23-5-427 through 23-5-430 reserved.

23-5-431. Criminal penalty. A person who purposely or knowingly violates or who procures, aids, or abets in a violation of this part or any ordinance, resolution, or rule adopted pursuant to this part is guilty of a misdemeanor punishable pursuant to 23-5-161.

History: **En. 62-723 by Sec. 9, Ch. 294, L. 1974; R.C.M. 1947, 62-723; amd. Sec. 43, Ch. 642, L. 1989.**

Part 5
Sports Pools

23-5-501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Sports pool" means a gambling activity, other than an activity governed under chapter 4 or chapter 5, part 2, of this title, in which a person wagers money for each chance to win money or other items of value based on the outcome of a sports event or series of sports events wherein the competitors in the sports event or series of sports events are natural persons or animals.

(2) "Sports tab" means a folded or banded ticket with a face covered to conceal a combination of two numbers, with each number ranging from zero through nine.

(3) "Sports tab game" means a gambling enterprise conducted on a card to which 100 sports tabs are attached that have 100 different combinations for which consideration in money is paid by the person purchasing each tab. A person may purchase a sports tab from the card for the chance to win money or other items of value on a sports event as provided in 23-5-503.

History: **En. 62-727 by Sec. 1, Ch. 290, L. 1974; R.C.M. 1947, 62-727(part); amd. Sec. 1, Ch. 22, L. 1989; amd. Sec. 43, Ch. 647, L. 1991.**

Compiler's Comments

Purported Amendment — Coordination: Section 3, Ch. 449, L. 1993, provided: "If House Bill No. 411 is passed and approved and if it includes a section amending the definition of "sports pool" in 23-5-501 to delete the words "or animals" at the end of the definition, then the portion of that section of House Bill No. 411 that deletes the words "or animals" is void." House Bill No. 411 was approved as Ch. 626, L. 1993, and sec. 13, Ch. 626, contained the indicated amendment to 23-5-501. Because removal of the words "or animals" was the only amendment to the section, the effect of the Ch. 449 coordination section was to render the Ch. 626 amendment to this section void.

23-5-502. Sports pools and sports tab games authorized — tax. (1) Conducting or participating in sports pools and sports tab games as defined and governed in this part is lawful, except that:

(a) sports tab games may only be conducted on premises licensed to sell alcoholic beverages for consumption on the premises; and

(b) only a licensee of premises that are located in an incorporated city or town with a population of less than 100 or located outside the boundaries of an incorporated city or town and that are licensed to sell alcoholic beverages for consumption on the premises may conduct a race between animals and conduct one or more sports pools on the race. The race may be conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises but outside of interior areas of the establishment where food and beverages are usually stored, prepared, or served.

(2) A manufacturer licensed under 23-5-115 who sells sports tabs to a licensed operator for use in a sports tab game shall collect from the operator, at the time of sale, a tax of $1 for each 100 sports tabs sold and, within 15

days after the end of each calendar quarter, submit to the department any forms required by the department and the proceeds of the collected tax. The manufacturer shall keep a record of taxes collected as required by department rule. The records must be made available for inspection by the department upon request of the department. The department shall retain the proceeds of the tax to administer this part.

History: En. 62-727.1 by Sec. 12, Ch. 508, L. 1977; R.C.M. 1947, 62-727.1; amd. Sec. 56, Ch. 647, L. 1991; amd. Sec. 2, Ch. 449, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 449 inserted (1)(b) allowing racing between pigs, gerbils, or hamsters under certain conditions and allowing sports pools on the race. Amendment effective April 21, 1993.

23-5-503. Rules. (1) The card or other device used for recording the sports pool or sports tab game must clearly indicate in advance of the sale of any chances the number of chances to be sold in that specific pool, the name of the event or series of events, the consideration to be paid for each chance, and the total amount or percentage to be paid to the winners. The sports tabs must be purchased from a manufacturer licensed under 23-5-115.

(2) Each sports tab or chance to participate in a sports pool must be sold for the same amount, which may not exceed $5, and the total amount paid to all winners of any individual sports pool or sports tab game may not exceed the value of $500. Chances for a series of events may be purchased all at once prior to the occurrence of the first event.

(3) (a) Except as provided in subsection (3)(b), the winners of any sports pool shall receive a 100% payout of the value of the sports pool. The winner of a sports tab game must receive at least 90% of the total cost of the 100 sports tabs. The operator of the sports tab game may retain the remaining money for administration and other expenses.

(b) A nonprofit organization that maintains records and opens the records to inspection upon reasonable demand to verify that the retained portion is used to support charitable activities, scholarships or educational grants, or community service projects may retain up to 50% of the value of a sports pool or sports tab game.

(4) A person or nonprofit organization conducting a sports pool or sports tab game may purchase chances or sports tabs to participate in the sports pool or sports tab game but may not:

(a) retain any portion of the amount wagered in the sports pool or sports tab game, except as provided in subsection (3)(b);

(b) charge a fee for participating in the sports pool or sports tab game; or

(c) use the sports pool or sports tab game in any manner to establish odds or handicaps or to allow betting or booking against the person or nonprofit organization conducting the pool or game.

History: En. 62-727 by Sec. 1, Ch. 290, L. 1974; R.C.M. 1947, 62-727(part); amd. Sec. 2, Ch. 22, L. 1989; amd. Sec. 58, Ch. 642, L. 1989; amd. Sec. 45, Ch. 647, L. 1991.

23-5-504 through 23-5-508. Repealed. Sec. 68, Ch. 642, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

23-5-504. En. 62-728 by Sec. 2, Ch. 290, L. 1974; R.C.M. 1947, 62-728.

23-5-505. En. 62-729 by Sec. 3, Ch. 290, L. 1974; amd. Sec. 13, Ch. 508, L. 1977; R.C.M. 1947, 62-729.

23-5-506. En. 62-730 by Sec. 4, Ch. 290, L. 1974; amd. Sec. 14, Ch. 508, L. 1977; R.C.M. 1947, 62-730.

23-5-507. En. 62-731 by Sec. 5, Ch. 290, L. 1974; amd. Sec. 15, Ch. 508, L. 1977; R.C.M. 1947, 62-731.

23-5-508. En. 62-732 by Sec. 6, Ch. 290, L. 1974; R.C.M. 1947, 62-732.

23-5-509. Penalty. A person who purposely or knowingly violates or who procures, aids, or abets in a violation of this part is guilty of a misdemeanor punishable pursuant to 23-5-161.

History: En. 62-733 by Sec. 7, Ch. 290, L. 1974; R.C.M. 1947, 62-733; amd. Sec. 59, Ch. 642, L. 1989.

23-5-510. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-735 by Sec. 9, Ch. 290, L. 1974; amd. Sec. 16, Ch. 508, L. 1977; R.C.M. 1947, 62-735.

23-5-511. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-734 by Sec. 8, Ch. 290, L. 1974; R.C.M. 1947, 62-734.

23-5-512. Sports pool design — department rules. (1) A sports pool must be designed to ensure that:

(a) there is at least one winner from among the participants in the pool; and

(b) each participant has an equal chance to win the pool.

(2) Competitors in a sports event or series of sports events must be randomly assigned to each participant in the sports pool.

(3) The department shall by rule describe the types of sports pools authorized by this part. Variations in the authorized sports pools must be submitted to the department for review and approval before they are made available for public play.

History: En. Sec. 44, Ch. 647, L. 1991.

Part 6

Video Gaming Machine Control Law

Part Cross-References

Slot machines, 23-5-153.

23-5-601. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 1, Ch. 720, L. 1985; amd. Sec. 36, Ch. 83, L. 1989.

23-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

(2) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(3) "Draw poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(4) "Gross income" means money put into a video gambling machine minus credits paid out in cash.

(5) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

History: En. Sec. 2, Ch. 720, L. 1985; amd. Sec. 1, Ch. 154, L. 1987; amd. Sec. 1, Ch. 317, L. 1987; amd. Sec. 1, Ch. 603, L. 1987; amd. Sec. 44, Ch. 642, L. 1989; amd. Sec. 54, Ch. 647, L. 1991; amd. Sec. 17, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 626 deleted definition of video gambling machine manufacturer-distributor that read: ""Video gambling machine manufacturer-distributor" means a person who assembles, produces, makes, or supplies video gambling machines or associated equipment for sale, use, or distribution in the state."

Cross-References

Liquor licensing criteria, Title 16, ch. 4, part 4.

23-5-603. Video gambling machines — possession — play — restriction. (1) A licensed operator may make available for public play only the number of approved video gambling machines specifically authorized by this part.

(2) The video gambling machines specifically authorized by this part are bingo, keno, and draw poker machines. Only the number of approved machines for which permits have been granted under 23-5-612 may be made available for play by the public on the premises of a licensed operator. The department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced while it is being repaired with a video gambling machine that is approved under the permit provisions of this part. A fee may not be charged for the replacement machine.

(3) Machines on premises licensed to sell alcoholic beverages for on-premises consumption must be placed:

(a) in a room, area, or other part of the premises in which alcoholic beverages are sold or consumed; and

(b) within control of the operator for the purpose of preventing access to the machines by persons under 18 years of age.

History: En. Sec. 9, Ch. 720, L. 1985; amd. Sec. 2, Ch. 603, L. 1987; amd. Sec. 4, Ch. 652, L. 1987; amd. Sec. 45, Ch. 642, L. 1989; amd. Sec. 46, Ch. 647, L. 1991.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

23-5-604 reserved.

23-5-605. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 7, Ch. 720, L. 1985; amd. Sec. 1, Ch. 211, L. 1987; amd. Sec. 3, Ch. 603, L. 1987.

23-5-606. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 3, Ch. 720, L. 1985; amd. Sec. 2, Ch. 211, L. 1987; amd. Sec. 1, Ch. 640, L. 1987; amd. Sec. 1, Ch. 344, L. 1989.

23-5-607. Expected payback — verification. The department shall prescribe the expected payback value of one credit awarded to be at least 80% of the value of one credit played. Each video gambling machine must have an electronic accounting device that the department may use to verify the winning percentage.

History: En. Sec. 4, Ch. 720, L. 1985; amd. Sec. 1, Ch. 163, L. 1987; amd. Sec. 4, Ch. 603, L. 1987; amd. Sec. 54, Ch. 642, L. 1989.

23-5-608. Limitation on amount of money played and value of prizes — payment of credits in cash. (1) A video gambling machine may not allow more than $2 to be played on a game or award free games or credits in excess of the following amounts:

(a) $100 a game for a video draw poker machine; and

(b) $800 a game for a video keno or bingo machine.

(2) A licensee shall pay in cash all credits owed to a player as shown on a valid ticket voucher.

History: En. Sec. 5, Ch. 720, L. 1985; amd. Sec. 3, Ch. 211, L. 1987; amd. Sec. 5, Ch. 603, L. 1987; amd. Sec. 53, Ch. 642, L. 1989.

23-5-609. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 8, Ch. 603, L. 1987; amd. Sec. 2, Ch. 344, L. 1989.

23-5-610. Video gambling machine gross income tax — records — distribution — quarterly statement and payment. (1) A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine licensed under this part. A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in the form the department may require. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total gross income from each video gambling machine licensed to the operator, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information as the department may require.

(4) (a) The department shall, in accordance with the provisions of 15-1-501(6), forward one-third of the tax collected under subsection (3) to the general fund.

(b) The department shall, in accordance with the provisions of 15-1-501(6), forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury.

History: En. Sec. 9, Ch. 603, L. 1987; amd. Sec. 52, Ch. 642, L. 1989; amd. Sec. 47, Ch. 647, L. 1991; amd. Sec. 29, Ch. 15, Sp. L. July 1992; amd. Sec. 16, Ch. 398, L. 1993; amd. Sec. 31, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 398 in (1), in second sentence after "amounts", inserted "stolen", after "insurance" inserted "or under a court order", and after "theft" inserted "and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented"; and made minor changes in style.

Chapter 455 near beginning of (4)(a) and (4)(b) inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

A style change was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

23-5-611. Machine permit qualifications — limitations. (1) (a) A person who has been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for consumption on the premises may be granted a permit for the placement of video gambling machines in his premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under 23-5-177, a permit for the same number of video keno or bingo gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the placement of bingo and keno machines in his premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination.

History: En. Sec. 8, Ch. 720, L. 1985; amd. Sec. 4, Ch. 211, L. 1987; amd. Sec. 46, Ch. 642, L. 1989; amd. Sec. 48, Ch. 647, L. 1991.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Liquor licensing criteria, Title 16, ch. 4, part 4.

23-5-612. Machine permits — fee. (1) The department, upon payment of the fee provided in subsection (2) and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) (a) The department shall charge an annual permit fee of $200 for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(b) If the person holding the gambling operator's license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator's license and if a machine transfer processing fee of $25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall retain 50% of the total permit fee collected under subsection (2)(a) and 100% of the machine transfer processing fee collected under subsection (2)(b) for purposes of administering this part. The balance of the fee collected under subsection (2)(a) must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury.

History: En. Secs. 10, 12, Ch. 720, L. 1985; amd. Sec. 2, Ch. 154, L. 1987; amd. Sec. 6, Ch. 603, L. 1987; amd. Sec. 1, Ch. 496, L. 1989; amd. Secs. 47, 73, Ch. 642, L. 1989; amd. Sec. 49, Ch. 647, L. 1991; amd. Sec. 1, Ch. 210, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 210 inserted (2)(b) relating to payment of a machine transfer processing fee following a change in ownership; in (3), in first sentence, inserted reference to 100% of machine transfer processing fee and in second sentence inserted reference to fee collected under subsection (2)(a); and made minor changes in style. Amendment effective July 1, 1993.

23-5-613. Violations. Unless otherwise provided in this part, a person who purposely or knowingly violates or procures, aids, or abets a violation of this part or an ordinance, resolution, or rule adopted under this part is guilty of a misdemeanor punishable under 23-5-161.

History: En. Sec. 11, Ch. 720, L. 1985; amd. Sec. 5, Ch. 211, L. 1987; amd. Sec. 56, Ch. 642, L. 1989.

Cross-References

Definition of "peace officer" as used in MCA, 1-1-207.

"Knowingly", "negligently", and "purposely" defined, 45-2-101.

Absolute liability, 45-2-104.

23-5-614. Sale of video gambling machines by operator or lienholder. (1) A licensed operator who is not licensed as a manufacturer, distributor, or route operator may sell up to 20 video gambling machines in a calendar year if the operator:

(a) had obtained permits for the machines and legally operated them prior to the sale; and

(b) sells the machines to another licensed operator or to a licensed manufacturer, distributor, or route operator.

(2) A lienholder who acquires title to video gambling machines through a foreclosure action involving a licensed manufacturer, distributor, route operator, or operator may sell the machines to a licensed manufacturer, distributor, route operator, or operator.

History: En. Sec. 19, Ch. 626, L. 1993.

23-5-615. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 6, Ch. 720, L. 1985; amd. Sec. 7, Ch. 603, L. 1987.

23-5-616. Removal of machine from public access. If a machine fails to meet the specifications and requirements of this part or any rule of the department which specification or requirement existed at the time the machine was approved at any time after its initial permit has been issued, the operator shall immediately remove the machine from public access until it meets all requirements.

History: En. Sec. 6, Ch. 211, L. 1987; amd. Sec. 50, Ch. 642, L. 1989.

23-5-617. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 7, Ch. 211, L. 1987.

23-5-618. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 8, Ch. 211, L. 1987.

23-5-619 reserved.

23-5-620. Video gambling machines — hours of play. A video gambling machine may not be played between the hours of 2 a.m. and 8 a.m. each day. However, in the jurisdiction of a local government where a game is played, the local government may adopt an ordinance allowing play between 2 a.m. and 8 a.m.

History: En. Sec. 55, Ch. 642, L. 1989.

23-5-621. Video gambling machine specifications — rules. The department shall adopt rules describing the video gambling machines authorized by this part and stating the specifications for video gambling machines authorized by this part. The specifications in the rules must substantially follow the specifications contained in 23-5-606 and 23-5-609 as those sections read on September 30, 1989. The department shall adopt rules allowing video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities.

History: En. Sec. 49, Ch. 642, L. 1989.

23-5-622. Tampering with video gambling machine — penalty. (1) A person commits the offense of tampering with a video gambling machine if he purposely or knowingly manipulates or attempts or conspires to manipulate the outcome or payoff of a video gambling machine by physical tampering or other interference with the proper functioning of the machine.

(2) A violation of this section is a felony and must be punished in accordance with 23-5-162.

History: En. Sec. 57, Ch. 642, L. 1989.

23-5-623 and 23-5-624 reserved.

23-5-625. Video gambling machine manufacturer — license — fees — restrictions. (1) It is unlawful for any person to assemble, produce, or manufacture any video gambling machine or associated equipment for use or play in the state without having first been issued a video gambling machine manufacturer's license by the department. A licensed manufacturer may supply a video gambling machine only to another licensed manufacturer or to a licensed distributor, route operator, or operator.

(2) Except as provided in subsection (6), the department shall charge an annual license fee of $1,000 for the issuance or renewal of a video gambling machine manufacturer's license.

(3) Except as provided in subsection (6), the department may charge the applicant an additional, one-time video gambling machine manufacturer's license application processing fee. The application processing fee may not exceed the department's actual costs for processing an application.

(4) All video gambling machine manufacturer's licenses expire on June 30 of each year, and the license fee may not be prorated.

(5) The department shall retain the license and processing fees collected for purposes of administering this part, unless otherwise provided.

(6) The department may waive the license fee provided for in subsection (2) if the applicant is licensed as a distributor or route operator and may waive the application processing fee provided for in subsection (3) if the applicant is licensed as a distributor, route operator, or operator.

History: **En. Sec. 2, Ch. 317, L. 1987; amd. Sec. 51, Ch. 642, L. 1989; amd. Sec. 50, Ch. 647, L. 1991; amd. Sec. 18, Ch. 626, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 626 throughout section substituted "manufacturer" for "manufacturer-distributor" and substituted "manufacturer's" for "manufacturer-distributor's"; in (1), at beginning, deleted "(a) Except as provided in subsections (2) and (3)", after "manufacture" deleted "or supply", and near end, after "licensed", inserted "distributor, route operator, or"; in (2), at beginning, inserted exception clause; in (3), at beginning, substituted "Except as provided in subsection (6)" for "In addition to other license fees"; deleted former (2) specifying conditions under which licensed operator who is not a manufacturer-distributor may sell video gambling machines (see 1993 Session Law for text); deleted former (3) authorizing foreclosing lienholder to sell video gambling machines (see 1993 Session Law for text); inserted (6) authorizing Department to waive license fee; and made minor changes in style.

23-5-626. Repealed. Sec. 68, Ch. 642, L. 1989.

History: **En. Sec. 3, Ch. 317, L. 1987.**

23-5-627. Repealed. Sec. 68, Ch. 642, L. 1989.

History: **En. Sec. 4, Ch. 317, L. 1987.**

23-5-628. Inspection of premises, records, and devices. The department or a local law enforcement official may inspect at any time during normal business hours a premises, as defined in 23-5-112, or a facility where gambling devices are manufactured or distributed. The inspection may include the examination of records, equipment, and proceeds related to the operation of a gambling activity or the manufacture or distribution of a gambling device.

History: **En. Sec. 10, Ch. 647, L. 1991.**

23-5-629 and 23-5-630 reserved.

23-5-631. Examination and approval of new video gambling machines and associated equipment — fee. (1) The department shall examine and may approve a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment that is manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used.

(2) A video gambling machine or associated equipment or a modification to an approved machine or associated equipment may not be examined or approved by the department until the video gambling machine manufacturer is licensed as required in 23-5-625.

(3) All video gambling machines or associated equipment approved by the department of commerce prior to October 1, 1989, must be considered approved under this part.

(4) The department shall require the manufacturer seeking the examination and approval of a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(5) Payments received under subsection (4) are statutorily appropriated to the department, as provided in 17-7-502, to defray the costs of examining and approving video gambling machines and associated equipment and modifications to approved machines and associated equipment and to issue refunds for overpayments.

(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine or associated equipment or a modification to an approved machine or associated equipment prior to its distribution and placement for play by the public. A manufacturer, distributor, or route operator may not supply a video gambling machine or associated equipment to a manufacturer, distributor, route operator, or operator unless the machine or equipment has been approved by the department.

History: En. Sec. 6, Ch. 317, L. 1987; amd. Sec. 48, Ch. 642, L. 1989; amd. Sec. 51, Ch. 647, L. 1991; amd. Sec. 17, Ch. 398, L. 1993; amd. Sec. 20, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 398 in (6) inserted second sentence prohibiting manufacturer, distributor, or route operator from supplying gambling machine or equipment to another manufacturer, distributor, route operator, or operator without approval.

Section 19, Ch. 398, L. 1993, a coordination instruction, in (6) deleted a sentence prohibiting manufacturer-distributor from supplying gambling machine or equipment to another licensed manufacturer-distributor or licensed operator without Department approval, contingent on passage and approval of House Bill No. 411. House Bill No. 411 was passed and approved as Ch. 626, L. 1993.

Chapter 626 in three places inserted "or a modification to an approved machine or associated equipment"; in two places substituted "manufacturer" for "manufacturer- distributor"; in (1), near beginning after "gambling machine", substituted "or" for "and"; in (3), after "machines", inserted "or associated equipment"; in (5), after "equipment", inserted "and modifications to approved machines and associated equipment"; in (6), in first sentence after "equipment", inserted "or associated equipment or a modification to an approved machine or associated equipment"; and made minor changes in style.

23-5-632 through 23-5-634 reserved.

23-5-635. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 5, Ch. 317, L. 1987.

23-5-636. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 7, Ch. 317, L. 1987.

23-5-637 through 23-5-645 reserved.

23-5-646. *(Temporary)* **Surtax — distribution.** (1) In addition to the amount of tax liability determined under 23-5-610, each licensed operator subject to taxation under this part shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must, in accordance with the provisions of 15-1-501(6), be deposited to the credit of the state general fund.

History: En. Sec. 28, Ch. 15, Sp. L. July 1992; amd. Sec. 32, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 in (2) inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Retroactive Applicability — Termination: Section 39(4), Ch. 15, Sp. L. July 1992, provided that this section applies to tax liabilities for calendar quarters beginning after June 30, 1992, and before July 1, 1993. This section terminates upon receipt of taxes for the quarter ending June 30, 1993.

Part 7
Casino Nights

23-5-701. Definitions. Unless the context requires otherwise, for purposes of this part, "casino night" means a fundraising event during which wagers may be made in gambling activities authorized in 23-5-702 through the use of imitation money.

History: En. Sec. 14, Ch. 647, L. 1991.

23-5-702. Casino nights authorized. (1) Nonprofit organizations may conduct or participate in a casino night.

(2) The following gambling activities may be conducted during a casino night:

(a) live card games authorized under 23-5-311;

(b) live bingo and keno games; and

(c) raffles.

History: En. Sec. 15, Ch. 647, L. 1991.

23-5-703 and 23-5-704 reserved.

23-5-705. Application for permit. (1) A nonprofit organization may apply to the department for a casino night permit on a form prescribed and furnished by the department. The application must be accompanied by a fee of $25.

(2) The application must include:

(a) the name and address of the applicant;

(b) the name and address of the applicant's officers;

(c) the location, date, and time at which the applicant will conduct the casino night;

(d) sufficient evidence concerning the structure and operation of the organization to enable the department to determine whether the applicant is a nonprofit organization; and

(e) other relevant information requested by the department.

History: En. Sec. 16, Ch. 647, L. 1991.

23-5-706. Issuance of permit — disposition of fee. (1) After review of an application submitted under 23-5-705, the department may issue to the applicant a casino night permit. Only one permit may be issued to the applicant each year. The permit is valid for only one location and is not assignable or transferable.

(2) The department shall retain the fee provided for in 23-5-705 for administrative purposes.

History: En. Sec. 17, Ch. 647, L. 1991.

23-5-707 through 23-5-709 reserved.

23-5-710. Requirements for conducting casino nights. A nonprofit organization that has obtained a permit under 23-5-706 shall conduct a casino night in compliance with the following conditions:

(1) The casino night may not last more than 12 consecutive hours.

(2) The casino night must be managed and operated only by members of the nonprofit organization that was issued the permit under 23-5-706. The members may not be compensated for their services.

(3) Only merchandise may be awarded as prizes.

(4) Proceeds derived from the casino night, after payment of reasonable administrative expenses, may be used only for a civic, charitable, or educational purpose, and administrative expenses may not exceed 50% of the proceeds.

History: En. Sec. 18, Ch. 647, L. 1991.

23-5-711. Nonapplicability of certain gambling laws. The provisions of parts 3 and 4 of this chapter, except 23-5-311, do not apply to live card games, live bingo or keno games, or raffles conducted during a casino night.

History: En. Sec. 19, Ch. 647, L. 1991.

23-5-712 through 23-5-714 reserved.

23-5-715. Rules. The department shall adopt rules to administer this part. At a minimum, the rules must address application procedures and play of the games during a casino night.

History: En. Sec. 20, Ch. 647, L. 1991.

Part 8

Fantasy Sports Leagues

23-5-801. Fantasy sports leagues defined. As used in this part, a "fantasy sports league" means a gambling activity conducted in the following manner:

(1) A fantasy sports league consists of a limited number of persons or groups of persons who pay an entrance fee for membership in the league. The entrance fee may include an administrative fee.

(2) Each league member creates a fictitious team composed of athletes from a given professional sport, such as baseball, basketball, or football. Player selection is conducted through random drawings or a bidding process.

(3) After the initial teams are selected, interim replacement of players may occur by trade or purchase. A specific fee, which may not exceed the total entrance fee, is charged for each transaction.

(4) A method, as defined by league rules, is devised to permit each team to compete against other teams in the league. Points are awarded to a team according to the performance of individual players or teams or both during a designated time period.

(5) A member may be eligible to receive a payout based on the number of points accumulated. Payouts, which may be in the form of cash or prizes, are awarded according to league rules.

(6) Rules governing the conduct of the fantasy sports league must be provided in writing to each member.

History: En. Sec. 21, Ch. 647, L. 1991.

23-5-802. Fantasy sports leagues authorized. It is lawful to conduct or participate in a fantasy sports league.

History: En. Sec. 22, Ch. 647, L. 1991.

23-5-803 and 23-5-804 reserved.

23-5-805. Payouts — administrative fees charged by commercial establishments. (1) The total value of payouts to all league members must equal the amount collected for entrance, administrative, and transactions fees, minus payment for administrative expenses.

(2) If a commercial establishment charges an administrative fee for conducting a fantasy sports league, the fee for each participant may not be more than 15% of the amount charged as a participant's entrance fee.

History: En. Sec. 23, Ch. 647, L. 1991.

23-5-806. Sports betting prohibited — applicability. Sections 23-5-801, 23-5-802, and 23-5-805 do not:

(1) authorize betting or wagering on the outcome of an individual sports event; or

(2) apply to gambling activities governed under chapter 4 or chapter 5, part 2 or 5, of this title.

History: En. Sec. 24, Ch. 647, L. 1991.

23-5-807 through 23-5-809 reserved.

23-5-810. Violations. A person who purposely or knowingly violates or procures, aids, or abets in a violation of this part is guilty of a misdemeanor punishable under 23-5-161.

History: En. Sec. 25, Ch. 647, L. 1991.

Part 9 reserved

Part 10

State Lottery (Renumbered. Sec. 57, Ch. 647, L. 1991)

Part Compiler's Comments

Sections Renumbered:

23-5-1001. Renumbered 23-7-101.
23-5-1002. Renumbered 23-7-102.
23-5-1003. Renumbered 23-7-103.
23-5-1004 and 23-5-1005 reserved.
23-5-1006. Renumbered 23-7-201.
23-5-1007. Renumbered 23-7-202.
23-5-1008. Renumbered 23-7-203.
23-5-1009 and 23-5-1010 reserved.
23-5-1011. Renumbered 23-7-210.
23-5-1012. Renumbered 23-7-211.
23-5-1013. Renumbered 23-7-212.
23-5-1014 and 23-5-1015 reserved.
23-5-1016. Renumbered 23-7-301.
23-5-1017. Renumbered 23-7-302.
23-5-1018. Renumbered 23-7-305.
23-5-1019. Renumbered 23-7-306.
23-5-1020. Renumbered 23-7-307.
23-5-1021. Renumbered 23-7-310.
23-5-1022. Renumbered 23-7-311.
23-5-1023 through 23-5-1025 reserved.
23-5-1026. Renumbered 23-7-401.
23-5-1027. Renumbered 23-7-402.
23-5-1028. Renumbered 23-7-410.
23-5-1029. Renumbered 23-7-411.
23-5-1030. Renumbered 23-7-412.
23-5-1031 through 23-5-1035 reserved.
23-5-1036. Renumbered 23-7-110.

Part 11

Calcutta Pools (Renumbered and Repealed. Sec. 68, 72, Ch. 642, L. 1989)

Part Compiler's Comments

Sections Renumbered and Repealed:

23-5-1101. Renumbered 23-5-221.
23-5-1102. Renumbered 23-5-222.
23-5-1103. Repealed. Sec. 68, Ch. 642, L. 1989.
23-5-1104. Repealed. Sec. 68, Ch. 642, L. 1989.
23-5-1105. Renumbered 23-5-223.
23-5-1106. Renumbered 23-5-224.

Histories of Repealed Sections:

23-5-1103. En. Sec. 3, Ch. 550, L. 1987.
23-5-1104. En. Sec. 4, Ch. 550, L. 1987.

CHAPTER 6

AMUSEMENT GAMES

Part 1 — General

23-6-101. Definitions.
23-6-102. Requirements for games.
23-6-103. Permits.
23-6-104. Amusement games allowed.
23-6-105. Authority to inspect.
23-6-106. Gambling and illegal gambling devices and enterprises prohibited.
23-6-107. Violations.

Chapter Cross-References

Gambling prohibited unless authorized by Legislature or the people, Art. III, sec. 9, Mont. Const.

Part 1
General

23-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this part:

(1) "Arcade" means a commercial establishment whose primary purpose is to make amusement games available for public play.

(2) "Concessionaire" means a person who owns one or more amusement games and who enters into an agreement with an operator, as defined in subsection (5)(a), to conduct games. A concessionaire may also be an operator.

(3) "Crane game" means an amusement game activated by the insertion of a coin or token by which the player uses one or more buttons, control sticks, or similar means of control or a combination of those means of control to position a mechanical or electromechanical claw or other retrieval device over a prize and attempts to retrieve it.

(4) "Nonprofit organization" means a nonprofit corporation or a nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, or service organization, established for a purpose other than conducting amusement games.

(5) "Operator" means a person who:

(a) enters into an agreement with a county fair commission, board of directors of a fair district, joint fair and civic center commission, business, or an association of businesses, such as a shopping center or downtown area, to provide amusement games; or

(b) makes an amusement game available for public play on premises owned by the operator or on premises owned by another person.

(6) "Prize" means:

(a) tangible personal property; or

(b) nontransferable tokens or tickets that may be accumulated and redeemed for tangible personal property.

History: En. Sec. 1, Ch. 523, L. 1991; amd. Sec. 1, Ch. 327, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 327 in definition of prize, at end of (a) and (b), deleted "with a wholesale value of $50 or less" and in (b), after "tickets", deleted "coupons"; and made minor changes in style.

23-6-102. Requirements for games. An operator, concessionaire, nonprofit organization, or arcade may provide amusement games to the public under the following conditions:

(1) The sale of a right to participate, the determination of winners, and the distribution of prizes all occur in the presence of all players.

(2) The appropriate permit to operate the game has been obtained as provided for in 23-6-103.

(3) The player pays cash for the right to play the game.

(4) Only a prize may be awarded, and a prize may not be repurchased from a player. Prizes, as defined in 23-6-101(6)(a), and tangible personal property that may be obtained through redemption of tokens or tickets must be displayed.

(5) (a) If tangible personal property, rather than tokens or tickets, is awarded following play of the amusement game, the wholesale value of the property may not exceed $50.

(b) If tokens or tickets are awarded following play of the amusement game:

(i) the value of the tokens or tickets for redemption purposes may not exceed 5 cents;

(ii) the maximum number of tokens or tickets awarded after a single play of the amusement game may not exceed the value of 10 times the total amount paid by all participants to play the amusement game; and

(iii) any tangible personal property for which tokens or tickets are redeemed may exceed a wholesale value of $50.

(6) The system for awarding prizes does not require forfeiture of a previously won prize unless the prize is traded for a prize of equal or greater value.

(7) Concealed numbers or conversion charts are not used in conducting the game.

(8) The game is not designed or adapted with a control device to permit manipulation of the game to control the ability of a player to win or to predetermine who the winner will be. A crane game may not contain a variable resistor or any turn screw, knob, potentiometer, or similar device that may be used to alter the closing strength of the game's claws or retrieval device.

(9) The object of the game is attainable and possible to perform, under the stated game rules, from the playing position of the player.

(10) The game is conducted in a fair and honest manner and does not constitute a fraud upon the players.

History: En. Sec. 2, Ch. 523, L. 1991; amd. Sec. 2, Ch. 327, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 327 substituted (4) concerning display of prizes and prohibition on repurchase for former text that read: "A cash prize is not awarded, and only a prize is awarded. Prizes must be displayed and may not be repurchased"; and inserted (5) stating that a tangible personal property prize may not exceed $50 in wholesale value, the value of a token or ticket for redemption purposes may not exceed 5 cents, the maximum value of tokens or tickets awarded after a single play may not exceed the value of 10 times the total amount paid by all participants to play the game, and tangible personal property for which tokens or tickets are redeemed may exceed $50 in wholesale value.

23-6-103. Permits. (1) Before making an amusement game available for public play, an operator, concessionaire, nonprofit organization, or arcade shall obtain the appropriate permit, as provided in subsections (2) through (4), from the board of county commissioners of the county in which the game is to be made available for public play. The board of county commissioners may not charge a fee for issuing a permit under this section.

(2) The board of county commissioners may issue a permit to an operator, as defined in 23-6-101(5)(a), a concessionaire, or a nonprofit organization. Each permit entitles the permittee to operate amusement games in the county for a maximum of 14 consecutive days.

(3) The board of county commissioners may issue an operator, as defined in 23-6-101(5)(b), an annual permit for each amusement game to be operated in the county. A permit is effective January 1 through December 31. An operator, as defined in 23-6-101(5)(a), a concessionaire, a nonprofit organiza-

tion, or an arcade that makes an amusement game available for public play need not obtain a permit under this subsection.

(4) The board of county commissioners may issue an annual permit to an arcade. A permit is effective January 1 through December 31.

History: En. Sec. 3, Ch. 523, L. 1991.

23-6-104. Amusement games allowed. (1) Crane games, as defined in 23-6-101, and the games described in subsection (2) may be made available for public play.

(2) (a) Fish pond (duck pond). The player catches a fish or other object floating in a pond of water by using a pole, hand, net, or string. All fish or objects are marked on the bottom, indicating the size of prize the player wins. The player is awarded a prize each time, and the player must be allowed to continue playing until a prize is won.

(b) Hoop or ring toss. The player tosses a hoop or ring over a target that must consist of bottles, pegs, blocks, or prizes. The operator shall specifically advise the player as to the degree that the hoop or ring must go over the target. All hoops of the same color used at an individual stand must be the same size. All targets used at an individual booth must be the same size, or the operator shall advise the player by posting signs or using color codes denoting the different sizes.

(c) Dart games. The target area for all dart games must be of a material capable of being penetrated and of retaining a metal tip dart. The target area must be in the rear of the stand and must be at least 3 feet but not more than 15 feet from the foul line. A target must be stationary at all times.

(i) Balloon (poparoo) (balloon smash). The targets are inflated balloons. The player throws one or more darts to burst a predetermined number of balloons. If the predetermined number of balloons are burst by the darts, the player receives the prize indicated.

(ii) Dart throw. The targets are various sizes and shapes located on the target area. The player throws darts individually at the target. A dart must stick in a predetermined target to win the prize as designated.

(iii) Tic tac toe dart. The target is a tic tac toe board located in the target area. The player throws darts at the target and wins a designated prize when the thrown darts line up in a row in the target. The darts may line up vertically, horizontally, or diagonally to win.

(iv) Add-um-up darts. The target consists of numbered squares located in the target area. Prizes are awarded based on the total score obtained by the player by throwing and sticking the darts in the numbered squares. A dart that sticks on a line must be thrown again. The player may add up the score of the darts thrown.

(d) Ball tosses. In all ball toss games, the balls used at a specific stand must be of the same weight and size. Targets must be of the same weight and size, or the operator shall color code the targets and advise the player of the difference in targets by posting a sign or providing a duplicate of the target showing the limitations or restrictions. The sign or duplicate target must be readily visible to the player.

(i) Milk bottle toss. The player tosses or throws balls at simulated milk bottles. The player wins by either tipping over or knocking bottles off the raised platform as designated by the operator. The bottles may be constructed of wood, metal, or plastic or a combination of the three. Operators may vary the number of bottles and balls used in each game. Floating or loose weights in bottles are not allowed. The weight of individual bottles may not exceed 7 1/2 pounds.

(ii) Milk can (Mexican hat) (cone). The player tosses a ball into the opening of a milk can, into a fiberglass Mexican hat turned upside down, or through a cone to win.

(iii) Football toss (tire toss). The player tosses or throws a football through a stationary tire or hoop to win.

(iv) Basketball toss/throw. The player tosses or throws a basketball through a hoop to win.

(v) Bushel baskets. The player tosses balls into a bushel basket mounted on a stationary backdrop at a fixed angle. The balls must stay in the basket to win. Rim shots are allowed, except the operator may designate the top 6 inches of the basket rim by color and disallow balls striking this area as winning tosses.

(vi) Cat-ball-toss (star/diamond toss). The player tosses balls into a simulated cat's mouth or a round, diamond, or star-shaped hole to win.

(vii) Ping pong toss. The player tosses ping pong balls into dishes, saucers, cups, or ashtrays floating in water. A predetermined number of balls must remain in the dishes, saucers, cups, or ashtrays for the player to win. The dishes, saucers, cups, or ashtrays must have water covering the bottom of the surface that is facing up.

(viii) Fishbowl game. The player tosses ping pong balls into a water-filled fish bowl to win.

(ix) Volleyball toss (soccer ball). The player tosses a volley or soccer ball into a keg-type container mounted on a stationary backdrop at a fixed angle. The ball must stay in the keg to win a prize. Rim shots are authorized as stated in subsection (2)(d)(v) for bushel baskets.

(x) Goblet ball (whiffle ball). The player tosses a whiffle ball into a target area of glass or plastic goblets. Located in the target area are colored goblets that determine the type of prize the player wins. At least 33% of the goblets in the target area must be winners. The ball must stay in the goblet to win a prize.

(xi) Break the plate/bottle. The player tosses or throws a ball at a plate, phonograph record, or bottle. The type of prize won is determined by the number of targets broken by the player.

(xii) Punk rack. The targets for this game are rows of dolls or cats on a ledge at the rear of the stand. The dolls or cats must be filled with sawdust, styrofoam, cotton, or other like material that provides a firm base for the ball to strike. The hair protruding from the side of the dolls or cats may not exceed 3 inches. The prize is determined by how many dolls or cats the player knocks over or off the ledge, as posted by the operator.

(xiii) Teeth game. The target consists of a large face with wooden teeth. The prize is determined by how many teeth the player knocks down by throwing a ball.

(xiv) Toilet game (doniker). To win, the player tosses or throws a ball or other object through a toilet seat located at the rear of the stand.

(xv) Coke roll. The player rolls a ball down an alley with the object of knocking over two coke bottles standing at the end of the alley. The player must tip over both bottles to win. Bottles must be placed on predetermined spots painted on the surface of the alley.

(xvi) Rolldown. The player rolls balls down an alley with the object of putting the balls in numbered slots at the end of the alley. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Scores above or below a predetermined score win. The alley surface must be smooth and free from defects at all times.

(xvii) Fascination (I got it). Fascination is a group game that involves competition among the players. The target area consists of 25 holes, and the player tosses or rolls a ball into one of the holes. The object of the game is to get five balls in a row either vertically, horizontally, or diagonally. The first player to accomplish this is the winner. Prize size is determined by the number of players participating in each game.

(xviii) Batter-up. The player uses a whiffle ball bat to swing and strike whiffle balls that are pitched at medium speed from a pitching machine. The player wins when the player hits a ball into the home run shelf. The home run shelf is located at the back of the batting cage approximately 15 feet from the player.

(xix) Sky bowling. Two bowling pins are set on predetermined painted spots on a shelf. A ball is attached to a chain suspended from a stationary support at least 6 inches to the right or left of the bowling pins. The object is to swing the ball, miss the pins with the ball as it goes forward, and knock the pins over as the ball returns.

(xx) Clown rolldown. A ball is tossed through the open mouth of a moving clown or animal head. The ball then rolls down a chute to numbered slots at the rear of the clown or animal head. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Prizes are awarded on the points achieved.

(xxi) Skee ball. The player rolls a ball up the mechanical bowling alley into targets. A computer adds up the scores, and the predetermined scores win.

(xxii) Speedball radar game. The player gets four balls and throws three balls through radar to establish speeds and to estimate at what speed the fourth ball will pass through the radar. The player wins a prize if the player accurately estimates the speed of the fourth ball. The radar must be mounted and stationary.

(e) Shooting games. These games are conducted by the player using a weapon of some type to shoot at a target in the rear of the stand. The safety requirements of local city or county ordinances must be observed by the operator and player. The target may be stationary or mobile.

(i) Short range (shooting gallery). In this game, the player is given four rounds to shoot at a spot target 1/4 inch or less in diameter. The player wins when the spot target is completely shot out, or the player is given five rounds to shoot one round each at five triangular, round, or 1/2-inch square targets.

The prize is determined by the number of targets struck by the player, or the player is given five rounds to shoot one round each at five triangular, round, or 1/2-inch square targets. Within each target is a bull's eye. The player must hit the bull's eye without touching the outer surface of the target. The prize is determined by the number of bull's eyes correctly hit.

(ii) Shoot-out-the-star (machine gun). The player, using an automatic air pellet gun, is given 100 pellets to shoot at a star-shaped target. The player must shoot out all of the target to win. The star cannot be more than 1 ¼ inches from point-to-point.

(iii) Water racer. This group game involves a competition, with the player winning a prize based on the number of players competing. The player, using a water pistol, shoots the water into a target. The water that strikes the target causes a balloon to inflate or advances an object to ring a bell. The first player who bursts the balloon or rings the bell is the winner.

(iv) Rapid fire. This group game involves competition similar to the water racer game described in subsection (2)(e)(iii). The player uses an electronic pistol to shoot at a target. Hits on the target give the player a score. The first player to reach a predetermined score is the winner.

(v) Cork gallery. The player uses a cork gun or similar device to propel objects, including but not limited to corks, suction cup darts, or styrofoam balls, to shoot at targets located on a shelf or at a bull's eye target. The player must hit the bull's eye or knock the target over or off the shelf to win a prize. The prize is determined by the target knocked over or off the shelf, by the number of targets knocked over or off the shelf, or by the player accomplishing other tasks, as stated in the posted rules. When suction cup darts or other darts are used and fail to stay on or in the target, the player must shoot the dart again. The base of each target must be uniform, front and rear.

(vi) Boomball. The player uses a cannon with compressed air to propel balls into a target area. The targets have varied point value. If the ball remains in the target, a computer adds up the score. Prizes are awarded based on the points achieved.

(f) Coin pitchers.

(i) Spot pitch (lucky strike). The player pitches a coin at colored spots located on a table in the center of the stand. The coin must touch or stay inside of a spot to win a prize.

(ii) Plate pitch. The player pitches a coin onto a glass plate to win a prize as designated.

(iii) Glass pitch (bowl). The player pitches a coin into or onto dishes or glasses. If the coin remains in a top target glass item, then the player wins that item.

(g) Cakewalk. The players walk on a predetermined route with designated spots, and when the operator stops the walk, the player on a predetermined spot wins a prize.

(h) Miscellaneous games.

(i) Skill chute (bulldozer) (penny fall).

(A) The games in each of the following sentences require the player to insert a coin or token into a chute, aiming the coin or token so that it will fall in front of a continuous sweeper (bulldozer) operating on a playing field containing additional coins, tokens, or merchandise. A coin that is aimed correctly will cause a sweeper (bulldozer) operating on a playing field containing additional coins to push coins into a counting mechanism that will convert the coins into tokens or tickets and dispense them to the player. A token that is aimed correctly will cause a sweeper (bulldozer) operating on a playing field containing additional tokens or merchandise to push the tokens or merchandise into a hole or chute that sends them to the player. A token that is aimed correctly will cause a sweeper (bulldozer) operating on a playing field containing additional tokens to push tokens into a hole or chute that sends them to the player or pushes tokens into a counting mechanism that will convert the tokens into tickets and dispense them to the player.

(B) There may not be a ledge, tip, or similar obstruction that inhibits the passage of coins, tokens, or merchandise into the counting mechanism, hole, or chute.

(ii) Tip-em-up bottle. The player is provided with a pole and a string that has a hoop or ring attached at the end. The player, using the pole with a ring, must raise a bottle lying on its side to an upright position to win.

(iii) Hi-striker. The player, using a wooden maul, must strike a lever target that causes a metal weight to rise on a guideline or track and ring a bell. The player must ring the bell a predetermined number of times to win a prize.

(iv) Rope ladder. The player must climb up a rope ladder, which is anchored at both ends by a swivel, and ring a bell or buzzer to win a prize.

(v) Whac-a-mole. This is a group game that has a target surface with five holes through which animated moles pop up and down at random. The player must hit as many moles as possible with a mallet. The first player to hit a predetermined number of moles wins.

(vi) Dip bowling game. The player rolls a bowling-type ball over a hump in the track. If the ball stays on the back side of the hump, the player wins.

(vii) Horserace derby. This is a group game in which a player advances a horse by shooting or rolling a ball in the target area. The faster and more skillfully the player shoots or rolls the ball, the faster the player's horse will run. The first horse to cross the finish line wins.

(viii) Shuffleboard. The player pushes a puck down a shuffleboard alley to knock over poly pins at the end of an alley. The player wins by knocking down all the pins.

(ix) Bean bag. The player tosses or throws a bean bag or a simulated bean bag at cans, bottles, or other objects on a raised platform. The player wins a prize when the player either knocks the object off the raised platform or tips the target over.

(x) Soccer kick. The player kicks a soccer ball through a hole in the target area to win.

(xi) Frog game. A plastic frog or similar object sits on a small end of a teeter-totter. The opposite end of the teeter-totter is struck with a mallet, causing the frog to fly off the teeter-totter. If the frog lands in a pail or similar receptacle, the player wins a prize.

(xii) Cover the spot. The object of this game is for the player to drop five circular discs onto a circular spot, completely covering the spot. The diameter of each of the discs used to cover the spot must be a minimum of 64% of the diameter of the spot to be covered. The spot to be covered must be painted or drawn on a permanent, solid material, such as metal or wood, or may be a lighted circle. The spot and each disc must have a uniform diameter.

(xiii) Pocket billiards. Using a regulation pocket billiard table, a player must run a consecutive number of balls to win a prize. The number of balls is set by the operator.

(xiv) Other coin- or token-operated games of skill. The player inserts a coin or token into a mechanical, electrical, or electromechanical device manufactured for bona fide amusement purposes only that dispenses tokens or tickets based on the player's skill in operating the device. Games authorized under this subsection are limited to those involving a substantial degree of skill. A substantial degree of skill is present if:

(A) a player's physical or mental abilities play an integral role in determining the number of tokens or tickets accumulated during the play of the game;

(B) the number of tokens or tickets initially received by the average player would increase with repeated play of the game; and

(C) a player's precision, dexterity, or knowledge enables the player to obtain more tokens or tickets than would be received by a less precise, dexterous, or knowledgeable player.

(3) In addition to the amusement games allowed by subsections (1) and (2), the department of justice may adopt rules allowing games that may be operated at a fair or carnival and that meet the requirements of this part and may set and collect fees to offset the costs associated with review and approval.

History: En. Sec. 4, Ch. 523, L. 1991; amd. Sec. 3, Ch. 327, L. 1993; amd. Sec. 1, Ch. 353, L. 1993; amd. Sec. 21, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 327 inserted (2)(h)(xiv) relating to "Other coin- or token-operated games of skill"; and made minor changes in style.

Chapter 353 inserted (3) allowing adoption by rule of additional fair or carnival games and the setting and collection of fees to offset costs; and made minor changes in style.

Chapter 626 in (2)(h)(i)(A), at beginning of first sentence, inserted "The games in each of the following sentences require the" and after "(bulldozer)" inserted "operating on a playing field containing additional coins, tokens, or merchandise", in second sentence, at beginning after "A coin", deleted "or token", after "(bulldozer)" inserted "operating on a playing field containing additional coins to", after "push" substituted "coins" for "additional tokens or prizes", and at end inserted phrase describing counting mechanism, and inserted most of third sentence and all of fourth sentence describing result of correctly aimed token; in (2)(h)(i)(B), at beginning, substituted "There may not be a" for "Tokens are exchanged for prizes. If there is a hidden", after "passage of" inserted "coins", after "tokens, or" substituted "merchandise" for "prizes", after "into the" inserted "counting mechanism", and after "or chute" deleted "that sends them to the player, the operator shall post a sign to advise the players"; and made minor changes in style.

23-6-105. Authority to inspect. At any time during normal business hours, local law enforcement officers and department of justice employees may inspect any amusement game made available for public play by an operator, concessionaire, nonprofit organization, or arcade for compliance with 23-6-102.

History: En. Sec. 5, Ch. 523, L. 1991.

23-6-106. Gambling and illegal gambling devices and enterprises prohibited. An operator, concessionaire, nonprofit organization, or arcade may not make available for play a gambling or illegal gambling device or enterprise governed under Title 23, chapter 5, parts 1 through 6.

History: En. Sec. 6, Ch. 523, L. 1991.

23-6-107. Violations. A person who purposely or knowingly violates or procures, aids, or abets in a violation of 23-6-102 is punishable by a fine not to exceed $1,000 or by imprisonment in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 7, Ch. 523, L. 1991.

CHAPTER 7

STATE LOTTERY

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Part 1

General

23-7-101. Short title. This chapter may be cited as the "Montana State Lottery Act of 1985".

History: En. Sec. 1, Ch. 669, L. 1985; Sec. 23-5-1001, MCA 1989; redes. 23-7-101 by Sec. 57, Ch. 647, L. 1991.

23-7-102. Purpose. (1) The purpose of this chapter is to allow lottery games in which the player purchases from the state, through the administrators of the state lottery, a chance to win a prize. This chapter does not allow and may not be construed to allow any game in which a player competes against or plays with any other person, including a person employed by an establishment in which a lottery game may be played.

(2) The administration and construction of this chapter must comply with Article III, section 9, of the Montana constitution, which mandates that all forms of gambling are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum. Therefore, this chapter must be strictly construed to allow only those games that are within the scope of this section and within the definition of "lottery game".

(3) The state lottery may not:

(a) operate a slot machine or carry on any form of gambling prohibited by the laws of this state; or

(b) carry on any form of gambling permitted by the laws of this state but which is not a lottery game within the scope of this section and within the definition of "lottery game".

History: En. Sec. 2, Ch. 669, L. 1985; Sec. 23-5-1002, MCA 1989; redes. 23-7-102 by Sec. 57, Ch. 647, L. 1991.

23-7-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Commission" means the state lottery commission created by 23-7-201.

(2) "Director" means the director appointed by the governor under 23-7-210 to administer and manage the state lottery.

(3) "Lottery" or "state lottery" means the Montana state lottery created and operated pursuant to this chapter.

(4) "Lottery game" means any procedure, including any on-line or other procedure using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant winner games, daily numbers games, and sports pool games, except games prohibited by Title 23, chapter 5, part 1; lotteries prohibited by Title 23, chapter 5, part 2; card games regulated by Title 23, chapter 5, part 3; raffles and bingo games governed by Title 23, chapter 5, part 4; and sports pools governed by Title 23, chapter 5, part 5.

History: En. Sec. 3, Ch. 669, L. 1985; Sec. 23-5-1003, MCA 1989; redes. 23-7-103 by Sec. 57, Ch. 647, L. 1991.

23-7-104 through 23-7-109 reserved.

23-7-110. Penalties. It is a misdemeanor, punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, to knowingly or purposely:

(1) require an employee to sell lottery tickets or chances in violation of 23-7-301(9);

(2) violate 23-7-301(11);

(3) sell a lottery ticket or chance to a person under 18 years of age;

(4) violate subsection (3) or (4) of 23-7-302;

(5) serve as a commissioner, director, assistant director, employee, or licensed agent of the state lottery in violation of 23-7-306;

(6) violate 23-7-307;

(7) violate 23-7-310; or

(8) influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials.

History: En. Sec. 20, Ch. 669, L. 1985; Sec. 23-5-1036, MCA 1989; redes. 23-7-110 by Sec. 57, Ch. 647, L. 1991.

Part 2
Administration

23-7-201. State lottery commission — allocation — composition — compensation — quorum. (1) There is a state lottery commission.

(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner shall be appointed to a 4-year term of office, and the terms shall be staggered.

(5) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

(6) The commission shall elect one of its members as chairman.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, at the rate of $50 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 4, Ch. 669, L. 1985; Sec. 23-5-1006, MCA 1989; redes. 23-7-201 by Sec. 57, Ch. 647, L. 1991.

23-7-202. Powers and duties of commission. The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) determine policies for the operation of the state lottery, supervise the director and his staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(3) maximize the net revenue paid to the superintendent of public instruction and to the board of crime control under 23-7-402 and ensure that all policies and rules adopted further revenue maximization;

(4) subject to 23-7-402(1), determine the percentage of the money paid for tickets or chances to be paid out as prizes;

(5) determine the price of each ticket or chance and the number and size of prizes;

(6) provide for the conduct of drawings of winners of lottery games;

(7) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;

(8) study and may enter into agreements with other lottery states to offer lottery games;

(9) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to this part, and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

(10) adopt rules relating to lottery staff sales incentives or bonuses and sales agents' commissions and any other rules necessary to carry out this part.

History: En. Sec. 5, Ch. 669, L. 1985; amd. Sec. 1, Ch. 161, L. 1987; amd. Sec. 1, Ch. 248, L. 1989; amd. Sec. 2, Ch. 408, L. 1989; Sec. 23-5-1007, MCA 1989; redes. 23-7-202 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 17, Ch. 799, L. 1991.

23-7-203. Legislative liaison committee — bipartisan — compensation from lottery fund. (1) There is a legislative liaison committee.

(2) The liaison committee consists of four legislators. Two members must be from the senate and two members must be from the house of representatives. The speaker of the house and the senate committee on committees shall appoint the members of the liaison committee, and no more than two members may be of the same political party. No legislator who has any ownership interest in any gambling device or establishment may be appointed to the liaison committee.

(3) A member of the liaison committee is entitled to compensation and expenses as provided in 5-2-302, paid from money appropriated to the lottery, while performing his duties as a member of the liaison committee, as provided in subsection (4) of this section.

(4) The liaison committee shall meet once each fiscal year with the commission at Helena and shall, as provided in 5-11-210, report to each legislature on the activities and operations of the state lottery.

History: En. Sec. 2, Ch. 161, L. 1987; amd. Sec. 3, Ch. 408, L. 1989; amd. Sec. 30, Ch. 112, L. 1991; Sec. 23-5-1008, MCA 1989; redes. 23-7-203 by Sec. 57, Ch. 647, L. 1991.

23-7-204 through 23-7-209 reserved.

23-7-210. Director — appointment — compensation — qualifications. (1) The director must be appointed by the governor and shall hold office at the pleasure of the governor.

(2) The director must be qualified by training and experience to direct the state lottery. He must be a full-time employee and may not engage in any other occupation.

(3) The director's salary is equal to 90% of the salary of the director of the department of commerce.

History: En. Sec. 6, Ch. 669, L. 1985; Sec. 23-5-1011, MCA 1989; redes. 23-7-210 by Sec. 57, Ch. 647, L. 1991.

23-7-211. Powers and duties of director. (1) The director shall:

(a) administer the operation of the state lottery in accordance with this chapter and the rules and other directives of the commission;

(b) appoint an assistant director for security and employ and direct personnel necessary to the operation of the state lottery;

(c) license lottery ticket or chance sales agents and suspend or revoke licenses pursuant to this chapter and commission rules; and

(d) maintain, with the assistant director for security, the security of the state lottery.

(2) (a) With the concurrence of the commission or pursuant to commission rules, the director may enter into contracts for materials, equipment, and supplies to be used in the operation of the state lottery, for the design and installation of games, for consultant services, and for promotion of the lottery. All contracts must be made in accordance with state law. A contract is not legal or enforceable that provides for the management of the state lottery or for the entire operation of its games by any private person or firm.

(b) When a contract is awarded, a performance bond satisfactory to and in an amount determined by the commission and executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the commission must be delivered to the commission. The requirements for this bond must be at least as stringent as those stated in 18-4-312(4).

History: En. Sec. 7, Ch. 669, L. 1985; Sec. 23-5-1012, MCA 1989; redes. 23-7-211 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 1, Ch. 24, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 24 in (2)(b), near beginning of first sentence after "satisfactory to", inserted "and in an amount determined by", near end, after "satisfactory to the commission", deleted "in an amount equal to the price of the contract", and inserted second sentence regarding bond requirements; and made minor changes in style. Amendment effective February 9, 1993.

23-7-212. Assistant director for security — qualifications — duties — compensation. (1) The director shall appoint an assistant director for security, who serves at the pleasure of the director.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security shall:

(a) be responsible for a security division to assure security, honesty, fairness, and integrity in the operation and administration of the lottery, including but not limited to an examination of the background of all prospective employees, ticket or chance sales agents, lottery vendors, and lottery contractors. The security division is designated a law enforcement agency for the purpose of administering this chapter.

(b) in conjunction with the director, confer with the attorney general or his designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the lottery; and

(c) in conjunction with the director, report any alleged violation of law to the attorney general, the legislative auditor, and any other appropriate law enforcement authority for further investigation and action.

(4) The salary of the assistant director for security is equal to 90% of the salary of the director of the lottery.

History: En. Sec. 8, Ch. 669, L. 1985; amd. Sec. 3, Ch. 161, L. 1987; Sec. 23-5-1013, MCA 1989; redes. 23-7-212 by Sec. 57, Ch. 647, L. 1991.

Part 3

Sales and Regulation

23-7-301. Ticket or chance sales agents — licenses. (1) Lottery tickets or chances may be sold only by ticket or chance sales agents licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery game tickets or chances may be sold.

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the applicant and his business or activity;

(ii) the accessibility of his place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) No person under 18 years of age may sell lottery tickets or chances.

(c) A license as an agent to sell lottery tickets or chances may not be issued to any person to engage in business exclusively as a lottery ticket or chance sales agent.

(4) The director may issue temporary licenses upon conditions he considers necessary.

(5) License applicants shall pay a $50 fee to cover the cost of investigating and processing the application.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display his license or a copy thereof conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) An employee of a ticket or chance sales agent may not be required to sell lottery game tickets or chances if the sale is against his religious or moral beliefs.

(10) Sales agents are entitled to a commission of no more than 10% of the face value of tickets and chances that they purchase from the lottery and do not return. However, to further the sale of lottery products, the lottery commission may adopt rules providing additional commissions to sales agents based on incremental sales. Commissions may not come from that part of all gross revenue that is net revenue and is paid to the superintendent of public instruction. The commissions are statutorily appropriated, as provided in 17-7-502, to the lottery.

(11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully showing his sales and provide it for inspection upon request of the commission, the director, the department of commerce, the office of the legislative auditor, or the office of the attorney general.

(12) Sales agents may pay the state lottery only by check, bankdraft, electronic fund transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of this chapter or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing.

History: En. Sec. 9, Ch. 669, L. 1985; amd. Sec. 1, Ch. 342, L. 1989; amd. Sec. 4, Ch. 408, L. 1989; Sec. 23-5-1016, MCA 1989; redes. 23-7-301 by Sec. 57, Ch. 647, L. 1991.

23-7-302. Sales restrictions. (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances may be purchased only with cash or a check and may not be purchased on credit.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, employees of any firm auditing or investigating the state lottery, governmental employees auditing or investigating the state lottery, or members of their households.

(5) The names of elected officials may not appear on any ticket or chance.

History: En. Sec. 10, Ch. 669, L. 1985; amd. Sec. 9, Ch. 161, L. 1987; amd. Sec. 5, Ch. 408, L. 1989; Sec. 23-5-1017, MCA 1989; redes. 23-7-302 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 18, Ch. 398, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 398 in (3), after "may", inserted "be purchased only with cash or a check and may".

23-7-303 and 23-7-304 reserved.

23-7-305. Disclosure of odds. The director shall make adequate disclosure of the odds with respect to each state lottery game by stating the odds in lottery game advertisements and by posting the odds at each place in which tickets or chances are sold.

History: En. Sec. 11, Ch. 669, L. 1985; Sec. 23-5-1018, MCA 1989; redes. 23-7-305 by Sec. 57, Ch. 647, L. 1991.

23-7-306. Felony and gambling-related convictions — ineligibility for lottery positions. No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a commissioner, director, assistant director, employee of the state lottery, or licensed ticket or chance sales agent. Prior to appointment as a commissioner, director, assistant director, or employee, a person shall submit to the commission a full set of fingerprints made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency. The assistant director for security may require a ticket or chance sales agent to submit fingerprints prior to licensing.

History: En. Sec. 14, Ch. 669, L. 1985; amd. Sec. 6, Ch. 408, L. 1989; Sec. 23-5-1019, MCA 1989; redes. 23-7-306 by Sec. 57, Ch. 647, L. 1991.

23-7-307. Conflict of interest. No commissioner, director, assistant director, state lottery employee, licensed ticket or chance sales agent, or member of his household may have a financial interest in any gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier.

History: En. Sec. 15, Ch. 669, L. 1985; amd. Sec. 7, Ch. 408, L. 1989; Sec. 23-5-1020, MCA 1989; redes. 23-7-307 by Sec. 57, Ch. 647, L. 1991.

23-7-308 and 23-7-309 reserved.

23-7-310. Disclosures by gaming suppliers. (1) Any person, firm, association, or corporation that submits a bid or proposal for a contract to supply lottery equipment, tickets, or other material or consultant services for use in the operation of the state lottery shall disclose at the time of such bid or proposal:

(a) the supplier's business name and address and the names and addresses of the following:

(i) if the supplier is a partnership, all of the general and limited partners;

(ii) if the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) if the supplier is an association, the members, officers, and directors;

(iv) if the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(v) if the supplier is a subsidiary company, each intermediary company, holding company, or parent company involved therewith and the officers, directors, and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company which is a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(b) if the supplier is a corporation, all the states in which the supplier is authorized to do business and the nature of that business;

(c) other jurisdictions in which the supplier has contracts to supply gaming materials, equipment, or consultant services;

(d) the details of any conviction, state or federal, of the supplier or any person whose name and address are required by subsection (1)(a) of a criminal offense punishable by imprisonment for more than 1 year and shall submit to the commission a full set of fingerprints of such person made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency;

(e) the details of any disciplinary action taken by any state against the supplier or any person whose name and address are required by subsection (1)(a) regarding any matter related to gaming consultant services or the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;

(f) audited annual financial statements for the preceding 5 years;

(g) a statement of the gross receipts realized in the preceding year from gaming consultant services and the sale, lease, or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(h) the name and address of any source of gaming materials or equipment for the supplier;

(i) the number of years the supplier has been in the business of supplying gaming consultant services or gaming materials or equipment; and

(j) any other information, accompanied by any documents the commission by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of this chapter.

(2) No person, firm, association, or corporation contracting to supply gaming equipment or materials or consultant services to the state for use in the operation of the state lottery may have any financial interest in any person, firm, association, or corporation licensed as a ticket or chance sales agent.

(3) No contract for supplying consultant services or gaming materials or equipment for use in the operation of the state lottery is enforceable against the state unless the requirements of this section have been fulfilled.

History: En. Sec. 17, Ch. 669, L. 1985; amd. Sec. 6, Ch. 161, L. 1987; Sec. 23-5-1021, MCA 1989; redes. 23-7-310 by Sec. 57, Ch. 647, L. 1991.

23-7-311. Drawings for and payment of prizes — unclaimed prizes. (1) All drawings must be held in public. The selection of winning tickets may not be performed by an employee of the lottery or by a member of the commission. All drawings must be witnessed by a professional staff employee of the legislative auditor's office, and all lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director's staff and a professional staff employee of the legislative auditor's office prior to and after each public drawing.

(2) The commission may provide for the immediate payment of prizes by the ticket or chance sales agent who sold the winning ticket or chance whenever the amount of the prize is less than an amount set by commission

rule. Payment may not be made directly by a machine or device or by a computer terminal.

(3) (a) Except as provided in subsection (3)(b), prizes over $100,000 may in the discretion of the commission be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 20 years and in yearly installment payments of not less than $20,000.

(b) If the commission enters into an agreement under the provisions of 23-7-202(8) to participate in a game for prizes of over $100,000 that requires payment periods of more than 20 years or yearly installment payments of less than $20,000 as a condition of participation, the commission may adopt the installment payment amounts and time periods necessary to comply with the conditions of the game.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order.

History: En. Sec. 16, Ch. 669, L. 1985; amd. Sec. 5, Ch. 161, L. 1987; Sec. 23-5-1022, MCA 1989; redes. 23-7-311 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 1, Ch. 25, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 25 in (3)(a), at beginning, inserted exception clause and at end substituted "and in yearly installment payments of not less than $20,000" for "except that each installment payment must be at least $20,000"; inserted (3)(b) allowing the Commission to adopt installment amounts and time periods for payment of lottery prizes in excess of $100,000; and made minor changes in style.

23-7-312. Lien on lottery winnings for debt collected by IV-D agency — notice to agency — payment to agency — procedure. (1) For purposes of this section, "IV-D agency" means the state child support enforcement agency created pursuant to Title IV-D of the Social Security Act and providing services under Title 40, chapter 5.

(2) The IV-D agency shall periodically certify to the state lottery the names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(3) Prior to the payment of lottery winnings in excess of $600, the state lottery shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(4) (a) If the winner is on the list of persons owing a debt to or collected by the IV-D agency, the state lottery shall make a good faith attempt to notify the IV-D agency and the agency then has a lien against the winnings in the amount of the debt owed to or collected by the IV-D agency. The state lottery has no liability to the IV-D agency or the individual on whose behalf the IV-D agency is collecting the debt if the state lottery fails to match a winner's name to a name on the list or is unable to notify the IV-D agency of a match. The IV-D agency shall provide the state lottery with written notice of a support lien promptly upon the state lottery's notification of a match.

(b) If the lottery winnings are to be paid through the state auditor, the lottery winner is entitled to notice and opportunity for hearing under Title 17, chapter 4, part 1, prior to any offset of the debt against the winnings.

(c) If the lottery winnings are to be paid directly by the state lottery, the amount of the debt owed to or collected by the IV-D agency must be held by the lottery for a period of 30 days from the lottery's confirmation of the amount of the debt to allow the IV-D agency to institute any necessary garnishment or withholding proceedings. If a garnishment or withholding proceeding is not initiated within the 30-day period, the lottery shall release the payment to the winner.

(d) The IV-D agency, in its discretion, may release or partially release the support lien upon written notice to the state lottery.

(e) A support lien under this section is in addition to any other lien created by law.

History: En. Sec. 1, Ch. 429, L. 1993.

Cross-References

Enforcement of support, Title 40, ch. 5.

Part 4

Finances and Audits

23-7-401. State lottery fund. There is a fund of the enterprise fund type, as defined in 17-2-102, to be known as the state lottery fund. The gross revenue from the state lottery, consisting of money from the sale of lottery tickets and chances, ticket or chance sales agent license fees, unclaimed prizes, or any other source, must be deposited in the fund, except that, at the discretion of the director, money for prizes paid immediately by a sales agent and money equaling the sales agent's commission may be drawn by a sales agent from his gross revenue before depositing his gross revenue with the state lottery.

History: En. Sec. 12, Ch. 669, L. 1985; Sec. 23-5-1026, MCA 1989; redes. 23-7-401 by Sec. 57, Ch. 647, L. 1991.

23-7-402. Disposition of revenue. (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. Except for the amount required to be paid under subsection (5), net revenue must be paid quarterly from the enterprise fund established by 23-7-401 to the superintendent of public instruction for distribution as state equalization aid to the public schools of Montana as provided in 20-9-343. The net revenue is statutorily appropriated, as provided in 17-7-502, to the superintendent of public instruction.

(4) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the budget office.

(5) (a) An amount equal to 9.1% of the net revenue derived under subsection (3), but not to exceed $1 million in any fiscal year, must be paid to the board of crime control.

(b) All money paid to the board of crime control under this subsection (5) must be used to fund state grants to counties for youth detention services and to cover the costs of administering the grant program as authorized in 41-5-1002. The grants are statutorily appropriated, as provided in 17-7-502, to the board of crime control. The costs of administering the grant program must be paid pursuant to a legislative appropriation.

History: **En. Sec. 13, Ch. 669, L. 1985; amd. Sec. 4, Ch. 161, L. 1987; amd. Secs. 5, 7, Ch. 635, L. 1987; amd. Sec. 1, Ch. 206, L. 1989; amd. Sec. 8, Ch. 408, L. 1989; amd. Sec. 5, Ch. 628, L. 1989; amd. Sec. 44, Ch. 11, Sp. L. June 1989; Sec. 23-5-1027, MCA 1989; redes. 23-7-402 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 16, Ch. 799, L. 1991; amd. Sec. 1, Ch. 461, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 461 deleted former (5)(a) that read: "For the fiscal year beginning July 1, 1991, 1.6% of the net revenue derived under subsection (3) must be paid quarterly to the board of crime control"; at beginning of present (5)(a) substituted "An amount equal to" for "For the fiscal year beginning July 1, 1992, and thereafter"; and in first sentence of (5)(b), after "services", inserted "and to cover the costs of administering the grant program", in second sentence, before "statutorily", substituted "grants are" for "revenue is", and inserted third sentence requiring administrative costs to be paid by legislative appropriation. Amendment effective July 1, 1993.

Cross-References

State grants for youth detention services, Title 41, ch. 5, part 10.

23-7-403 through 23-7-409 reserved.

23-7-410. Annual audit. The legislative auditor shall conduct or have conducted an annual audit of the state lottery. The costs of the audit must be paid out of the state lottery fund. A copy of the audit report must be delivered to the commission, the director, the governor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house.

History: **En. Sec. 18, Ch. 669, L. 1985; amd. Sec. 9, Ch. 408, L. 1989; Sec. 23-5-1028, MCA 1989; redes. 23-7-410 by Sec. 57, Ch. 647, L. 1991.**

23-7-411. Audit of lottery security. (1) After the first 9 months of sales to the public and every 2 years after that, the office of the legislative auditor shall conduct or have conducted a comprehensive audit of all aspects of security in the operation of the lottery. The costs of the audit are a state lottery operating expense and must be paid out of the state lottery fund. The audit must include:

(a) personnel security;

(b) lottery sales agent security;

(c) lottery contractor security;

(d) security of manufacturing operations of lottery contractors;

(e) security against ticket or chance counterfeiting and alteration and other means of fraudulently winning;

(f) security of drawings among entries or finalists;

(g) computer security;

(h) data communications security;

(i) data base security;

(j) systems security;

(k) lottery premises and warehouse security;

(l) security in distribution;

(m) security involving validation and payment procedures;

(n) security involving unclaimed prizes;

(o) security aspects applicable to each particular lottery game;

(p) security of drawings in games whenever winners are determined by drawings;

(q) the completeness of security against locating winners in lottery games with preprinted winners by persons involved in their production, storage, distribution, administration, or sales; and

(r) any other aspects of security applicable to any particular lottery game and to the lottery and its operations.

(2) The security audit report must be presented to the commission, the director, the governor, the president of the senate, and the speaker of the house of representatives.

History: En. Sec. 19, Ch. 669, L. 1985; Sec. 23-5-1029, MCA 1989; redes. 23-7-411 by Sec. 57, Ch. 647, L. 1991.

23-7-412. Certain audit findings confidential. Specific audit findings relating to security invasion techniques are confidential and may be reported only to the legislative audit committee, the director of the lottery, the commission, the attorney general, and the governor.

History: En. Sec. 8, Ch. 161, L. 1987; Sec. 23-5-1030, MCA 1989; redes. 23-7-412 by Sec. 57, Ch. 647, L. 1991.

TITLE 24

RESERVED

TITLE 25

CIVIL PROCEDURE

Ch.
1. General Provisions.
2. Venue.
3. Service of Process and Other Papers.
4. Pleadings, Motions, and Other Papers.
5. Parties.
Chapter 6 reserved.
7. Trials.
8. Deposit in Court — Delivery to Party.
9. Judgment.
10. Costs.
11. New Trial.
12. Appeal to Supreme Court.
13. Execution of Judgment.
14. Proceedings in Aid of Execution.
15. Liability of Joint Debtors.
Chapters 16 through 18 reserved.
19. Uniform District Court Rules.
20. Rules of Civil Procedure.
21. Rules of Appellate Procedure.
22. Montana Justice Courts — Rules of Civil Procedure. Superseded. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.
23. Montana Justice and City Court Rules of Civil Procedure.
24. Montana Uniform Rules for the Justice and City Courts.
Chapters 25 through 29 reserved.
30. Procedure in Municipal Courts.
31. Procedure in Justices' Courts.
32. Procedure in City Courts. Repealed. Sec. 63, Ch. 16, L. 1991.
33. Appeal to District Court From Justices' and City Courts.
34. Small Claims Procedure — District Court.
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CHAPTER 1

GENERAL PROVISIONS

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25-1-1108 through 25-1-1110 reserved.
25-1-1111. Bond required.
25-1-1112. Action on bond.

Chapter Cross-References

State courts open to every person, Art. II, sec. 16, Mont. Const.

Rights and justice to be administered without sale, denial, or delay, Art. II, sec. 16, Mont. Const.

Speedy remedy for every injury of person, property, or character, Art. II, sec. 16, Mont. Const.

Part 1

Civil Actions — Form and Commencement

25-1-101. One form of civil action. There is in this state but one form of civil action for the enforcement or protection of private rights and the redress or prevention of private wrongs.

History: En. Sec. 1, p. 43, Bannack Stat.; amd. Sec. 1, p. 135, L. 1867; amd. Sec. 1, p. 28, Cod. Stat. 1871; re-en. Sec. 1, p. 40, L. 1877; re-en. Sec. 1, 1st Div. Rev. Stat. 1879; re-en. Sec. 1, 1st Div. Comp. Stat. 1887; amd. Sec. 460, C. Civ. Proc. 1895; re-en. Sec. 6425, Rev. C. 1907; re-en. Sec. 9008, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 307; re-en. Sec. 9008, R.C.M. 1935; R.C.M. 1947, 93-2301.

Cross-References

Actions and special proceedings defined, 27-1-102.

Civil and criminal actions, 27-1-103.

Bases for civil actions, 27-1-104.

25-1-102. Limitations on commencing actions. (1) Civil actions can only be commenced within the periods prescribed in Title 27, chapter 2, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute.

(2) The word "action", as used in this section, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

History: (1)En. Sec. 1, p. 466, Bannack Stat.; re-en. Sec. 1, p. 515, Cod. Stat. 1871; re-en. Sec. 28, p. 45, L. 1877; re-en. Sec. 28, 1st Div. Rev. Stat. 1879; re-en. Sec. 28, 1st Div. Comp. Stat. 1887; re-en. Sec. 470, C. Civ. Proc. 1895; re-en. Sec. 6428, Rev. C. 1907; re-en. Sec. 9011, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 312; re-en. Sec. 9011, R.C.M. 1935; Sec. 93-2401, R.C.M. 1947; (2)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 93-2401, 93-2720; amd. Sec. 79, Ch. 575, L. 1981.

Cross-References

Commencement of action, Rule 3, M.R.Civ.P. (see Title 25, ch. 20).

Definition of special proceeding, 27-1-102.

Uniform Conflict of Laws—Limitations Act, Title 27, ch. 2, part 5.

25-1-103. When action considered pending. An action is deemed to be pending from the time of its commencement until its final determination upon appeal or until the time for appeal has passed, unless the judgment is sooner satisfied.

History: En. Sec. 1895, C. Civ. Proc. 1895; re-en. Sec. 7188, Rev. C. 1907; re-en. Sec. 9821, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1049; re-en. Sec. 9821, R.C.M. 1935; R.C.M. 1947, 93-8706.

Cross-References

Execution of judgment, Title 25, ch. 13.

Time for filing notice of appeal, Rule 5, M.R.App.P. (see Title 25, ch. 21).

Execution of judgment in Justice's Court, Title 25, ch. 31, part 11.

Appeal to District Court from Justices' and City Courts, Title 25, ch. 33.

25-1-104 through 25-1-110 reserved.

25-1-111. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 1931, C. Civ. Proc. 1895; re-en. Sec. 7201, Rev. C. 1907; re-en. Sec. 9835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1064; re-en. Sec. 9835, R.C.M. 1935; R.C.M. 1947, 93-8802.

Part 2

Fees

25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $80; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, a fee of $120; and for filing a petition for legal separation, a fee of $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five pages of each file, per request, and 25 cents per additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, $40 must be deposited in the state general fund, $35 must be remitted to the state to be deposited as provided in 19-5-404, $5 must be deposited in the children's trust fund account established by 41-3-702, and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state to be deposited as provided in 19-5-404.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

History: En. Sec. 4636, Pol. C. 1895; re-en. Sec. 3169, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1917; re-en. Sec. 4918, R.C.M. 1921; re-en. Sec. 4918, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1967; amd. Sec. 1, Ch. 33, L. 1977; amd. Sec. 1, Ch. 548, L. 1977; R.C.M. 1947, 25-232; amd. Sec. 1, Ch. 493, L. 1981; amd. Sec. 80, Ch. 575, L. 1981; amd. Sec. 1, Ch. 10, L. 1983; amd. Sec. 1, Ch. 12, L. 1983; amd. Sec. 1, Ch. 524, L. 1983; amd. Sec. 11, Ch. 709, L. 1983; amd. Sec. 7, Ch. 610, L. 1985; amd. Sec. 1, Ch. 271, L. 1987; amd. Sec. 1, Ch. 318, L. 1987; amd. Sec. 1, Ch. 642, L. 1987; amd. Sec. 1, Ch. 645, L. 1987; amd. Sec. 1, Ch. 221, L. 1989; amd. Sec. 4, Ch. 664, L. 1989; amd. Secs. 3, 4, Ch. 656, L. 1991; amd. Sec. 1, Ch. 570, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 570 in (1)(h), before "from", substituted "transcript of the docket" for "abstract of judgment" and at end substituted "the fee for entry of judgment provided for in subsection (1)(c)" for "$25"; deleted former (5)(a)(iv) and (5)(a)(v) that read: "(iv) on the entry of judgment as provided in subsection (1)(h), $20;

(v) for issuing an execution or order of sale as provided in subsection (1)(i), $3"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Duties of the clerk, Title 3, ch. 5, part 5.

Payment of naturalization fees, 3-5-515.

Manner of appearance by party, 25-3-401.

Governmental entities not required to prepay fees, 25-10-405.

Payment of marriage license fee, 40-1-202.

Use of marriage license fee for battered spouses and domestic violence program, 52-6-105.

25-1-202. Fee for court reporter. In addition to other filing fees, a fee of $10 must be paid to the clerk of the district court at the time of filing a civil action in the district court. The fee must be paid by the clerk into the treasury of the county where the action is filed, to be applied to the payment of the salary of the reporter. The prevailing party may have the amount paid by him taxed in his bill of costs as proper disbursements.

History: En. Sec. 1979, 5th Div. Comp. Stat. 1887; re-en. Sec. 374, C. Civ. Proc. 1895; re-en. Sec. 6377, Rev. C. 1907; re-en. Sec. 8932, R.C.M. 1921; re-en. Sec. 8932, R.C.M. 1935; amd. Sec. 5, Ch. 22, L. 1961; R.C.M. 1947, 93-1905; amd. Sec. 3, Ch. 640, L. 1989.

Cross-References

Court reporters, Title 3, ch. 5, part 6.

Payment of reporter's fees in military courts, 10-1-406.

Costs generally allowable, 25-10-201.

Costs allowable against the state, 25-10-405, 25-10-702, 25-10-711.

Claiming costs, Title 25, ch. 10, part 5.

Personal liability of public officers for costs, 25-10-701.

Costs allowed in Justice's Court, 25-30-107.

Bill of costs unnecessary in Justice's Court, 25-31-1002.

Part 3
Time

25-1-301. Extension of time. Subject to Rule 6(b), M.R.Civ.P., whenever this code requires or allows an act to be done at or within a specified time, which act relates to the pleadings in the action, the undertakings to be filed, the justification of sureties, the preparation of statements or of amendments thereto, or the service of notices other than of appeal, the time allowed by this code may be extended, upon good cause shown, by the court in which the action is pending or a judge thereof; but such extension shall not exceed 90 days without the consent of the adverse party.

History: En. Sec. 1897, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 27, L. 1903; re-en. Sec. 7190, Rev. C. 1907; re-en. Sec. 9823, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1054; re-en. Sec. 9823, R.C.M. 1935; R.C.M. 1947, 93-8708; amd. Sec. 82, Ch. 575, L. 1981.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3.

Computation and extension of time, Rule 21, M.R.App.P. (see Title 25, ch. 21).

Part 4

Undertakings for Security

25-1-401. Deposit of money in lieu of undertaking. In all cases where an undertaking or bond with sureties is required by the provisions of this code, the plaintiff or defendant may deposit with the clerk of the court or justice of the peace or city judge, as the case may be, a sum of money equal to the amount required by the undertaking or bond, which shall be taken as security in the place thereof. At any time such deposit may be withdrawn by the party making it upon giving the undertaking with sufficient sureties as required by law, approved by the clerk or justice or judge, upon notice to the adverse party or his attorney, who may object to the sufficiency of the sureties in the same manner as though the undertaking were filed in the first instance.

History: En. Sec. 1904, C. Civ. Proc. 1895; re-en. Sec. 7198, Rev. C. 1907; re-en. Sec. 9831, R.C.M. 1921; re-en. Sec. 9831, R.C.M. 1935; R.C.M. 1947, 93-8716.

Cross-References

Security for costs, Title 25, ch. 10, part 6.

Undertaking for costs on appeal, Rule 6, M.R.App.P. (see Title 25, ch. 21).

Sureties and their justification, Rule 8, M.R.App.P. (see Title 25, ch. 21).

Appeals in forma pauperis, Rule 18, M.R.App.P. (see Title 25, ch. 21).

Money in lieu of undertaking in Justice's Court, 25-31-115.

Security for costs in Justice's Court, 25-31-402.

25-1-402. Governmental entities not required to give security. In any civil action or proceeding wherein the state, a county, or a municipal corporation or any officer in his official capacity on behalf of the state or a county, city, or town is a party plaintiff or defendant, no bond, undertaking, or security can be required of the state, county, municipal corporation, or town or any officer thereof; but on complying with the other provisions of this code, the state, county, municipal corporation, or town or any officer thereof acting in his official capacity has the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by this code. The board of trustees of any school district is entitled to the benefit of this section.

History: En. Sec. 1902, C. Civ. Proc. 1895; re-en. Sec. 7196, Rev. C. 1907; re-en. Sec. 9829, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1058; re-en. Sec. 9829, R.C.M. 1935; R.C.M. 1947, 93-8714.

Cross-References

Community college included as school district, 20-15-403.

Stay in favor of state without security, Rule 62(e), M.R.Civ.P. (see Title 25, ch. 20).

Sureties and their justification, Rule 8, M.R.App.P. (see Title 25, ch. 21).

Part 5

Notice to Attorney General

Part Cross-References

Service of process on state, 2-9-313.

Duties of Attorney General, 2-15-201, 2-15-501.

Service required upon Attorney General, Rule 4D(2)(h), M.R.Civ.P. (see Title 25, ch. 20).

Intervention, Rule 24, M.R.Civ.P. (see Title 25, ch. 20).

Attorney General to be notified of constitutional questions, Rule 24(c), M.R.Civ.P. (see Title 25, ch. 20); Rule 38, M.R.App.P. (see Title 25, ch. 21).

Necessary parties, 27-8-301.

25-1-501. Notice to be given to attorney general when state department or board initiates or intervenes in an action. When a department or board of this state initiates or intervenes in an action in any court, a copy of the complaint, counterclaim, or cross-claim must be served on the attorney general.

History: En. Sec. 1, Ch. 91, L. 1979.

25-1-502. Notice of appeal to be served on attorney general. When a department or board of this state appeals from a judgment or order entered in any court of this state, a copy of the notice of appeal must be served on the attorney general.

History: En. Sec. 2, Ch. 91, L. 1979.

Parts 6 through 10 reserved

Part 11

Registration of Process Servers — Levying Officers

25-1-1101. Registered process server — levying officer. (1) Any person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year shall file a verified certificate of registration as a process server with the clerk of the district court of the county in which he resides or has his principal place of business.

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of his employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13.

History: En. Sec. 1, Ch. 548, L. 1987.

25-1-1102. Contents of registration certificate. The certificate of registration of a process server must contain the following statements:

(1) the name, age, address, and telephone number of the registrant;

(2) that the registrant has not been convicted of a felony;

(3) that the registrant has been a resident of this state for a period of 1 year immediately preceding the filing of the certificate; and

(4) that the registrant will perform his duties as a process server in compliance with the provisions of law governing the service of process in this state.

History: En. Sec. 2, Ch. 548, L. 1987.

25-1-1103. Fee — duration of certificate. (1) A certificate of registration as a process server must be accompanied by a fee of $100 at the time the certificate is filed. The fee must be deposited in the county general fund for district court operations, unless the county has a district court fund. If the county has a district court fund, the fee must be deposited in that fund.

(2) A certificate of registration is effective for a period of 2 years from the date of filing. A new certificate must be filed upon expiration of a certificate and a new registration fee must accompany the new certificate.

History: En. Sec. 3, Ch. 548, L. 1987.

25-1-1104. Handbook for process servers. (1) The department of commerce shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server must demonstrate that he has passed an examination based on the handbook and administered by the board of private security patrol officers and investigators provided for in 2-15-1891.

(3) The department of commerce may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section.

History: En. Sec. 4, Ch. 548, L. 1987; amd. Sec. 1, Ch. 217, L. 1989.

25-1-1105. List of process servers — identification. (1) The clerk of the district court shall maintain a list of all process servers registered in the county. The clerk of the district court shall assign a number to each registered process server. Upon renewal of a certificate of registration, the same number may be assigned.

(2) During the course of serving process or acting as a levying officer, a registered process server must have in his possession an identification card with the number assigned under subsection (1) and a photograph of the registered process server. The clerk of the district court shall furnish the identification card, the cost of which must be reimbursed by the process server.

History: En. Sec. 5, Ch. 548, L. 1987.

25-1-1106. Revocation or suspension of certificate. (1) A certificate of registration of a registered process server may be revoked or suspended by the county attorney of the county of registration whenever the registrant makes a service of process not complying with the law.

(2) The county attorney may conduct an investigation concerning the revocation or suspension of a certificate based on the complaint of a person alleging injury caused by improper service of process by the registrant.

(3) The county attorney shall notify the clerk of the district court when a certificate of registration is suspended, revoked, or reinstated.

History: En. Sec. 8, Ch. 548, L. 1987.

25-1-1107. Proof of service — requirements. A proof of service of process signed by a registered process server must indicate the county in which he is registered and the number assigned to him under 25-1-1105.

History: En. Sec. 9, Ch. 548, L. 1987.

25-1-1108 through 25-1-1110 reserved.

25-1-1111. Bond required. (1) The clerk of the district court may not accept a certificate of registration as a process server unless the certificate is accompanied by a surety bond of $10,000 per individual or $100,000 per firm, conditioned upon compliance with this part and all laws governing service of process in this state.

(2) A levying officer may not levy on a judgment that exceeds the value of the bond.

History: En. Sec. 6, Ch. 548, L. 1987.

25-1-1112. Action on bond. (1) Any person who recovers damages for an injury caused by a service of process, made by a registered process server, that did not comply with the law governing service of process in this state may recover the amount of damages from the bond required under 25-1-1111.

(2) If there has been recovery against a registered process server's bond, the registrant must file a new bond within 30 days or reinstate the bond. If the bond has not been reinstated or filed within 30 days, the county attorney must revoke the registrant's certificate.

History: En. Sec. 7, Ch. 548, L. 1987.

CHAPTER 2

VENUE

Part 1 — Proper Place of Trial—Venue

25-2-101. Renumbered 25-2-121 by Code Commissioner, 1985.
25-2-102. Renumbered 25-2-122 by Code Commissioner, 1985.
25-2-103. Renumbered 25-2-123 by Code Commissioner, 1985.
25-2-104. Renumbered 25-2-124 by Code Commissioner, 1985.
25-2-105. Renumbered 25-2-125 by Code Commissioner, 1985.
25-2-106. Renumbered 25-2-126(2) by Code Commissioner, 1985.
25-2-107. Repealed.
25-2-108. Renumbered 25-2-118 by Code Commissioner, 1985.
25-2-109 and 25-2-110 reserved.
25-2-111. Scope of part.
25-2-112. Designation of proper place of trial not jurisdictional.
25-2-113. Power of court to change place of trial.
25-2-114. Right of defendant to move for change of place of trial.
25-2-115. Multiple proper counties.
25-2-116. Multiple claims.
25-2-117. Multiple defendants.
25-2-118. Residence of defendant.
25-2-119 and 25-2-120 reserved.
25-2-121. Contracts.
25-2-122. Torts.
25-2-123. Real property.
25-2-124. Recovery of statutory penalty or forfeiture.
25-2-125. Against public officers or their agents.
25-2-126. Against state, county, and political subdivisions.
25-2-127 through 25-2-130 reserved.
25-2-131. Specific statutes control.

Part 2 — Change of Venue

25-2-201. When change of venue required.
25-2-202. Change of venue on agreement of parties.

25-2-203. Papers to be transmitted.
25-2-204. Jurisdiction preserved.
25-2-205. Allocation of costs between counties.
25-2-206. Judgment affecting real property to be transmitted.

Chapter Cross-References

Jurisdiction and venue unaffected, Rule 82, M.R.Civ.P. (see Title 25, ch. 20).

Part 1

Proper Place of Trial — Venue

Part Cross-References

Terms and location of District Courts, Title 3, ch. 5, part 4.

Improper venue as subject of motion, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

Trials and hearings — orders in chambers, Rule 77(b), M.R.Civ.P. (see Title 25, ch. 20).

Appellate review of place of trial, Rule 1, M.R.App.P. (see Title 25, ch. 21).

25-2-101. Renumbered 25-2-121 by Code Commissioner, 1985.

25-2-102. Renumbered 25-2-122 by Code Commissioner, 1985.

25-2-103. Renumbered 25-2-123 by Code Commissioner, 1985.

25-2-104. Renumbered 25-2-124 by Code Commissioner, 1985.

25-2-105. Renumbered 25-2-125 by Code Commissioner, 1985.

25-2-106. Renumbered 25-2-126(2) by Code Commissioner, 1985.

25-2-107. Repealed. Sec. 17, Ch. 432, L. 1985.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part).

25-2-108. Renumbered 25-2-118 by Code Commissioner, 1985.

25-2-109 and 25-2-110 reserved.

25-2-111. Scope of part. The proper place of trial (venue) of a civil action is in the county or counties designated in this part.

History: En. Sec. 1, Ch. 432, L. 1985.

25-2-112. Designation of proper place of trial not jurisdictional. The designation of a county in this part as a proper place of trial is not jurisdictional and does not prohibit the trial of any cause in any court of this state having jurisdiction.

History: En. Sec. 2, Ch. 432, L. 1985.

Cross-References

Original jurisdiction of Supreme Court, 3-2-202.

Original jurisdiction of District Courts, 3-5-302.

Jurisdiction of Municipal Courts and Justices' Courts, 3-6-103; Title 3, ch. 10, part 3.

Jurisdiction of Water Courts, 3-7-224; Title 3, ch. 7, part 5.

Jurisdiction of City Courts, Title 3, ch. 11, part 1.

Jurisdiction of Small Claims Courts, 3-12-106.

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

25-2-113. Power of court to change place of trial. The designation in this part of a proper place of trial does not affect the power of a court to change the place of a trial for the reasons stated in 25-2-201(2) or (3), or pursuant to an agreement of the parties as provided in 25-2-202.

History: En. Sec. 3, Ch. 432, L. 1985.

25-2-114. Right of defendant to move for change of place of trial. If an action is brought in a county not designated as the proper place of trial, a defendant may move for a change of place of trial to a designated county.

History: En. Sec. 4, Ch. 432, L. 1985.

25-2-115. Multiple proper counties. If this part designates more than one county as a proper place of trial for any action, an action brought in any such county is brought in a proper county and no motion may be granted to change the place of trial upon the ground that the action is not brought in a proper county under 25-2-201(1). If an action is brought in a county not designated as a proper place of trial, a defendant may move for a change of place of trial to any of the designated counties.

History: En. Sec. 5, Ch. 432, L. 1985.

25-2-116. Multiple claims. In an action involving two or more claims for which this part designates more than one as a proper place of trial, a party entitled to a change of place of trial on any claim is entitled to a change of place of trial on the entire action, subject to the power of the court to separate claims or issues for trial under Rule 42(b) of the Montana Rules of Civil Procedure.

History: En. Sec. 6, Ch. 432, L. 1985.

25-2-117. Multiple defendants. If there are two or more defendants in an action, a county that is a proper place of trial for any defendant is proper for all defendants, subject to the power of the court to order separate trials under Rule 42(b) of the Montana Rules of Civil Procedure. If an action with two or more defendants is brought in a county that is not a proper place of trial for any of the defendants, any defendant may make a motion for change of place of trial to any county which is a proper place of trial.

History: En. Sec. 7, Ch. 432, L. 1985.

25-2-118. Residence of defendant. Unless otherwise specified in this part:

(1) except as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them may reside at the commencement of the action;

(2) if none of the defendants reside in the state, the proper place of trial is any county the plaintiff designates in the complaint;

(3) the proper place of trial of an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner has resided during the 90 days preceding the commencement of the action.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part); amd. Sec. 8, Ch. 432, L. 1985; sec. 25-2-108, MCA 1983; redes. 25-2-118 by Code Commissioner, 1985.

Cross-References

Rules for determination of residence, 1-1-215.

25-2-119 and 25-2-120 reserved.

25-2-121. Contracts. (1) The proper place of trial for actions upon contracts is either:

(a) the county in which the defendants, or any of them, reside at the commencement of the action; or

(b) the county in which the contract was to be performed. The county in which the contract was to be performed is:

(i) the county named in the contract as the place of performance; or

(ii) if no county is named in the contract as the place of performance, the county in which, by necessary implication from the terms of the contract, considering all of the obligations of all parties at the time of its execution, the principal activity was to take place.

(2) Subsections (2)(a) through (2)(d) do not constitute a complete list of classes of contracts; if, however, a contract belongs to one of the following classes, the proper county for such a contract for the purposes of subsection (1)(b)(ii) is:

(a) contracts for the sale of property or goods: the county where possession of the property or goods is to be delivered;

(b) contracts of employment or for the performance of services: the county where the labor or services are to be performed;

(c) contracts of indemnity or insurance: the county where the loss or injury occurred or where a judgment is obtained against the assured or indemnitee or where payment is to be made by the insurer;

(d) contracts for construction or repair: the county where the object to be constructed or repaired is situated or is to be built.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part); amd. Sec. 9, Ch. 432, L. 1985; sec. 25-2-101, MCA 1983; redes. 25-2-121 by Code Commissioner, 1985.

25-2-122. Torts. The proper place of trial for a tort action is:

(1) the county in which the defendants, or any of them, reside at the commencement of the action; or

(2) the county where the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county where the contract was to be performed.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part); amd. Sec. 10, Ch. 432, L. 1985; sec. 25-2-102, MCA 1983; redes. 25-2-122 by Code Commissioner, 1985.

25-2-123. Real property. (1) The proper place of trial for the following actions is the county in which the subject of the action or some part thereof is situated:

(a) for the recovery of real property or of an estate or an interest therein or for the determination, in any form, of such right or interest;

(b) for injuries to real property;

(c) for the partition of real property;

(d) for the foreclosure of all liens and mortgages on real property.

(2) Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties and the county so selected is the proper county for the trial of such action.

(3) The proper place of trial for all actions for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real property is the county in which the real property, or any part thereof, affected by such action or actions is situated.

History: (1), (2)En. Sec. 18, p. 46, Bannack Stat.; en. Sec. 18, p. 137, L. 1867; re-en. Sec. 23, p. 30, Cod. Stat. 1871; re-en. Sec. 56, p. 51, L. 1877; re-en. Sec. 56, 1st Div. Rev. Stat. 1879; re-en. Sec. 56, 1st Div. Comp. Stat.1887; re-en. Sec. 610, C. Civ. Proc. 1895; re-en. Sec. 6501, Rev. C. 1907; re-en. Sec. 9093, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 392; re-en. Sec. 9093, R.C.M. 1935; Sec. 93-2901, R.C.M. 1947; (3)En. Sec. 43, C. Civ. Proc. 1895; re-en. Sec. 6277, Rev. C. 1907; re-en. Sec. 8831, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 78; re-en. Sec. 8831, R.C.M. 1935; Sec. 93-320, R.C.M. 1947; R.C.M. 1947, 93-320(part), 93-2901; amd. Sec. 11, Ch. 432, L. 1985; sec. 25-2-103, MCA 1983; redes. 25-2-123 by Code Commissioner, 1985.

Cross-References

Quieting title to real property, Title 70, ch. 28.

Partition of real property, Title 70, ch. 29.

Definition of foreclosure, 71-1-221.

25-2-124. Recovery of statutory penalty or forfeiture. The proper place of trial for the recovery of a penalty or forfeiture imposed by statute is the county where the cause or some part thereof arose, except that when it is imposed for an offense committed on a lake, river, or other stream of water situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream and opposite to the place where the offense was committed.

History: En. Sec. 19, p. 46, Bannack Stat.; re-en. Sec. 19, p. 137, L. 1867; re-en. Sec. 24, p. 31, Cod. Stat. 1871; re-en. Sec. 57, p. 51, L. 1877; re-en. Sec. 57, 1st Div. Rev. Stat. 1879; re-en. Sec. 57, 1st Div. Comp. Stat. 1887; re-en. Sec. 611, C. Civ. Proc. 1895; re-en. Sec. 6502, Rev. C. 1907; re-en. Sec. 9094, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 393; re-en. Sec. 9094, R.C.M. 1935; R.C.M. 1947, 93-2902(part); amd. Sec. 12, Ch. 432, L. 1985; sec. 25-2-104, MCA 1983; redes. 25-2-124 by Code Commissioner, 1985.

25-2-125. Against public officers or their agents. The proper place of trial for an action against a public officer or person specially appointed to execute his duties for an act done by him in virtue of his office or against a person who, by his command or in his aid, does anything touching the duties of such officer is the county where the cause or some part thereof arose.

History: En. Sec. 19, p. 46, Bannack Stat.; re-en. Sec. 19, p. 137, L. 1867; re-en. Sec. 24, p. 31, Cod. Stat. 1871; re-en. Sec. 57, p. 51, L. 1877; re-en. Sec. 57, 1st Div. Rev. Stat. 1879; re-en. Sec. 57, 1st Div. Comp. Stat. 1887; re-en. Sec. 611, C. Civ. Proc. 1895; re-en. Sec. 6502, Rev. C. 1907; re-en. Sec. 9094, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 393; re-en. Sec. 9094, R.C.M. 1935; R.C.M. 1947, 93-2902(part); amd. Sec. 13, Ch. 432, L. 1985; sec. 25-2-105, MCA 1983; redes. 25-2-125 by Code Commissioner, 1985.

Cross-References

Bonds of public officers and employees, Title 2, ch. 9, parts 6 through 8.

25-2-126. Against state, county, and political subdivisions. (1) The proper place of trial for an action against the state is in the county in which the claim arose or in Lewis and Clark County. In an action brought by a resident of the state, the county of his residence is also a proper place of trial.

(2) The proper place of trial for an action against a county is that county unless such action is brought by a county, in which case any county not a party thereto is also a proper place of trial.

(3) The proper place of trial for an action against a political subdivision is in the county in which the claim arose or in any county where the political subdivision is located.

History: (1), (3)En. Sec. 21, Ch. 380, L. 1973; R.C.M. 1947, 82-4321; amd. Sec. 15, Ch. 432, L. 1985; sec. 2-9-312, MCA 1983; redes. 25-2-126(1), (3) by Code Commissioner, 1985; (2)En. Sec. 58, p. 52, L. 1877; re-en. Sec. 58, 1st Div. Rev. Stat. 1879; re-en. Sec. 58, 1st Div. Comp. Stat. 1887; amd. Sec. 612, C. Civ. Proc. 1895; re-en. Sec. 6503, Rev. C. 1907; re-en. Sec. 9095, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 394; re-en. Sec. 9095, R.C.M. 1935; R.C.M. 1947, 93-2903; amd. Sec. 14, Ch. 432, L. 1985; sec. 25-2-106, MCA 1983; redes. 25-2-126(2) by Code Commissioner, 1985.

Cross-References

Liability exposure of governmental entities, Title 2, ch. 9, part 1.

Claims and actions against governmental entities, Title 2, ch. 9, part 3.

25-2-127 through 25-2-130 reserved.

25-2-131. Specific statutes control. The provisions of this part do not repeal, by implication or otherwise, specific statutes not within this part, designating a proper place of trial, whether or not such a designation is called venue or proper place of trial.

History: En. Sec. 16, Ch. 432, L. 1985.

Cross-References

Legal proceedings affecting hazardous waste management facilities — venue, 75-10-420.

Part 2
Change of Venue

Part Cross-References

Right of accused to impartial jury, Art. II, sec. 24, Mont. Const.

Change of venue in emergency, 3-5-405.

Hearings outside district on agreement of parties, Rule 77(b), M.R.Civ.P. (see Title 25, ch. 20).

Appellate review of refusal to change venue, Rule 1, M.R.App.P. (see Title 25, ch. 21).

25-2-201. When change of venue required. The court or judge must, on motion, change the place of trial in the following cases:

(1) when the county designated in the complaint is not the proper county;

(2) when there is reason to believe that an impartial trial cannot be had therein;

(3) when the convenience of witnesses and the ends of justice would be promoted by the change.

History: En. Sec. 21, p. 46, Bannack Stat.; amd. Ch. 8, L. 3d Session 1866, which was set aside by Act of Congress of March 2, 1867; amd. Sec. 1, p. 68, L. 1867; amd. Sec. 27, p. 31, Cod. Stat. 1871; re-en. Sec. 62, p. 53, L. 1877; re-en. Sec. 62, 1st Div. Rev. Stat. 1879; re-en. Sec. 62, 1st Div. Comp. Stat. 1887; amd. Sec. 615, C. Civ. Proc. 1895; en. Ch. 2, Ex. L. 1903; re-en. Sec. 6506, Rev. C. 1907; re-en. Sec. 9098, R.C.M. 1921; Cal. C. Civ. Proc.

Sec. 397; re-en. Sec. 9098, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1973; [(4) superseded by Sup. Ct. Ord., 34 St. Rep. 26, eff. March 1, 1977]; R.C.M. 1947, 93-2906.

Cross-References

Motion for change of place of trial, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

Appeal of order changing or refusing to change place of trial when the county designated in the complaint is not the proper county, Rule 1, M.R.App.P. (see Title 25, ch. 21).

25-2-202. Change of venue on agreement of parties. All the parties to an action, by stipulation or by consent in open court entered in the minutes, may agree that the place of trial may be changed to any county in the state. Thereupon the court must order the change as agreed upon.

History: En. Sec. 619, C. Civ. Proc. 1895; re-en. Sec. 6510, Rev. C. 1907; re-en. Sec. 9102, R.C.M. 1921; re-en. Sec. 9102, R.C.M. 1935; R.C.M. 1947, 93-2910.

Cross-References

Change of place of hearing upon agreement of parties, Rule 77(b), M.R.Civ.P. (see Title 25, ch. 20).

25-2-203. Papers to be transmitted. When an order is made transferring an action or proceeding for trial, the clerk of the court must transmit the pleading and papers therein to the clerk of the court to which it is transferred.

History: En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; R.C.M. 1947, 93-2908(part).

25-2-204. Jurisdiction preserved. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

History: En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; R.C.M. 1947, 93-2908(part).

Cross-References

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.; Title 3, ch. 5, part 3.

25-2-205. Allocation of costs between counties. In case of a change of the place of trial from one county to another, as provided for in 25-2-201, the county in which the action or proceeding is tried shall recover from the county in which the action was commenced all additional costs or expenses that may have been incurred by such county by reason of extra jurors or bailiff's fees or other court expenses incurred by such county by reason of the hearing or trial of said action, motion, or proceeding. Such extra costs shall be allowed by the court, the clerk of the court of such county shall certify the same to the board of county commissioners of the county in which said action, motion, or proceeding was commenced, and said board shall allow and cause the same to be paid.

History: En. Sec. 1, Ch. 5, Ex. L. 1903; re-en. Sec. 6512, Rev. C. 1907; re-en. Sec. 9104, R.C.M. 1921; re-en. Sec. 9104, R.C.M. 1935; R.C.M. 1947, 93-2912.

25-2-206. Judgment affecting real property to be transmitted. When an action or proceeding affecting the title to or possession of real estate has been brought in or transferred to any court of a county other than the county in which the real estate or some portion of it is situated, the clerk of such court must, after final judgment therein, certify under his seal of office and transmit to the corresponding court of the county in which the real estate affected by the action is situated a copy of the judgment. The clerk receiving such copy must file, docket, and record the judgment in the record of the court, briefly designating it as a judgment transferred from ..... court (naming the proper court).

History: En. Sec. 65, p. 54, L. 1877; re-en. Sec. 65, 1st Div. Rev. Stat. 1879; re-en. Sec. 65, 1st Div. Comp. Stat. 1887; re-en. Sec. 618, C. Civ. Proc. 1895; re-en. Sec. 6509, Rev. C. 1907; re-en. Sec. 9101, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 400; re-en. Sec. 9101, R.C.M. 1935; R.C.M. 1947, 93-2909.

CHAPTER 3

SERVICE OF PROCESS AND OTHER PAPERS

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Service on military reservation, 2-1-204.

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Registration of process servers, Title 25, ch. 1, part 11.

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

Service and filing of pleadings and other papers, Rule 5, M.R.Civ.P. (see Title 25, ch. 20).

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Part 1
General Provisions

25-3-101. Definitions. As used in parts 2 and 3 of this chapter, the following definitions apply:

(1) "Notice" includes all papers and orders (except process) required to be served in any proceeding before any court, board, or officer or required by law to be served independently of such proceeding.

(2) "Process" includes all writs, warrants, summonses, and orders of courts of justice or judicial officers.

History: En. Sec. 4380, Pol. C. 1895; re-en. Sec. 3009, Rev. C. 1907; re-en. Sec. 4773, R.C.M. 1921; Cal. Pol. C. Sec. 4175; re-en. Sec. 4773, R.C.M. 1935; R.C.M. 1947, 16-2701.

Part 2
Service by an Officer

Part Cross-References

Service by Supreme Court Marshal, 3-2-502.

Service by Constable, 3-10-701, 3-10-706.

Duties of County Sheriff, 7-4-3001; Title 7, ch. 32, part 21.

25-3-201. Delivery of papers to officer. (1) It is the duty of the clerk of any district court, at the request of a party in any civil action pending in such court or his agent or attorney, to forward by mail any process, summons, or other papers required in the cause; and it is the duty of the sheriff, registered process server, or other officer to whom said papers may be directed to receive the same at the place where the same are directed. When process in one county is intended for service in another, it is the duty of the clerk to forward the same in like manner.

(2) If the papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service.

(3) If any sheriff, registered process server, or other officer refuses to receive any summons or other process at the point where directed to him or to serve the same, he is guilty of a misdemeanor and upon conviction thereof must be fined in any sum not exceeding $100.

History: (1), (3)En. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. Comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; Sec. 93-3016, R.C.M. 1947; (2)En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 25-226, R.C.M. 1947; R.C.M. 1947, 25-226(part), 93-3016(part); amd. Sec. 83, Ch. 575, L. 1981; amd. Sec. 10, Ch. 548, L. 1987.

25-3-202. When officer's execution of process justified and required. A sheriff, registered process server, or other ministerial officer is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

History: En. Sec. 4395, Pol. C. 1895; re-en. Sec. 3024, Rev. C. 1907; re-en. Sec. 4788, R.C.M. 1921; Cal. Pol. C. Sec. 4187; re-en. Sec. 4788, R.C.M. 1935; R.C.M. 1947, 16-2716; amd. Sec. 11, Ch. 548, L. 1987.

25-3-203. Prepayment of cost of service. In no case shall the officer or registered process server receiving papers for service be required to serve the same unless the person in whose behalf the service is made or his agent or attorney first pay the cost of the service upon a demand therefor by the officer or registered process server.

History: En. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. Comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; R.C.M. 1947, 93-3016(part); amd. Sec. 12, Ch. 548, L. 1987.

25-3-204. Officer to exhibit process. The officer or registered process server executing such process must, then and at all times subsequent so long as he retains it, upon request, show the same with all papers attached to any person interested therein.

History: En. Sec. 4396, Pol. C. 1895; re-en. Sec. 3025, Rev. C. 1907; re-en. Sec. 4789, R.C.M. 1921; Cal. Pol. C. Sec. 4188; re-en. Sec. 4789, R.C.M. 1935; R.C.M. 1947, 16-2717; amd. Sec. 13, Ch. 548, L. 1987.

25-3-205. Execution of process when sheriff a party. When the sheriff is a party to an action or proceeding, the process and orders therein which it would otherwise be the duty of the sheriff to execute must be executed by the coroner of the county or a registered process server.

History: En. Sec. 4399, Pol. C. 1895; re-en. Sec. 3028, Rev. C. 1907; re-en. Sec. 4792, R.C.M. 1921; Cal. Pol. C. Sec. 4191; re-en. Sec. 4792, R.C.M. 1935; R.C.M. 1947, 16-2720; amd. Sec. 14, Ch. 548, L. 1987.

Cross-References

Coroner allowed same salary as Sheriff for like services, 7-4-2911.

Duties of County Coroner, 7-4-2911.

25-3-206. Execution by elisor. (1) Process or orders in an action or proceeding may be executed by a person residing in the county, designated by the court or a judge thereof, and denominated an elisor, in the following cases:

(a) The sheriff and coroner are both parties.

(b) Either of these officers is a party and the process is against the other.

(c) Either of these officers is a party and there is a vacancy in the office of the other.

(d) It appears by affidavit to the satisfaction of the court in which the proceeding is pending or the judge thereof that both of these officers are disqualified or, by reason of any bias, prejudice, or other cause, would not act promptly or impartially.

(2) When process is delivered to an elisor, he must execute and return it in the same manner as the sheriff is required to execute similar process. The court or judge may at any time on its own motion appoint an elisor.

History: En. Sec. 4400, Pol. C. 1895; re-en. Sec. 3029, Rev. C. 1907; re-en. Sec. 4793, R.C.M. 1921; Cal. Pol. C. Sec. 4192; re-en. Sec. 4793, R.C.M. 1935; R.C.M. 1947, 16-2721.

Part 3
Return of Service

Part Cross-References

Return of service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Filing and proof of service other than process, Rule 5(d) through 5(f), M.R.Civ.P. (see Title 25, ch. 20).

25-3-301. Time and manner of return. (1) It shall be the duty of the sheriff or other person serving a summons or other process or order required by any of the provisions of this code, issued out of any of the district courts of this state, to make due and legal return of such service and file the same with the clerk of the court in which such action or proceeding is pending not more than 10 days after the making of such service where the same was made in the county in which such action or proceeding is pending and not more than 15 days after the making of such service when the same was made outside of the county in which such action or proceeding is pending. Any failure to make and file such return as required may be punished as a contempt of court.

(2) When process or a notice is returnable to another county or was forwarded under 25-3-201, the sheriff or a registered process server may enclose his return of such process or notice in an envelope addressed to the officer who sent it and deposit it in the post office, prepaying postage.

History: (1)En. Sec. 1, Ch. 38, L. 1907; re-en. Sec. 6527, Rev. C. 1907; re-en. Sec. 9124, R.C.M. 1921; re-en. Sec. 9124, R.C.M. 1935; Sec. 93-3020, R.C.M. 1947; (2)En. Sec. 4385, Pol. C. 1895; re-en. Sec. 3014, Rev. C. 1907; re-en. Sec. 4778, R.C.M. 1921; Cal. Pol. C. Sec. 4177; re-en. Sec. 4778, R.C.M. 1935; Sec. 16-2706, R.C.M. 1947; R.C.M. 1947, 16-2706, 93-3020; amd. Sec. 84, Ch. 575, L. 1981; amd. Sec. 15, Ch. 548, L. 1987.

25-3-302. Return prima facie evidence. The return of the sheriff or registered process server upon process or notices is prima facie evidence of the facts in such return stated.

History: En. Sec. 4386, Pol. C. 1895; re-en. Sec. 3015, Rev. C. 1907; re-en. Sec. 4779, R.C.M. 1921; Cal. Pol. C. Sec. 4178; re-en. Sec. 4779, R.C.M. 1935; R.C.M. 1947, 16-2707; amd. Sec. 16, Ch. 548, L. 1987.

Part 4
Service of Papers After Defendant's Appearance

Part Cross-References

Service of process upon party, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Service of pleadings upon party's attorney, Rule 5(b), M.R.Civ.P. (see Title 25, ch. 20).

25-3-401. Notice requirements after appearance of defendant. A defendant appears in an action when he answers, files a motion, or gives the plaintiff written notice of his appearance or when an attorney gives notice of appearance for him or has such appearance entered in open court. After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given.

History: En. Sec. 494, p. 232, L. 1867; re-en. Sec. 574, p. 152, Cod. Stat. 1871; re-en. Sec. 478, p. 167, L. 1877; re-en. Sec. 478, 1st Div. Rev. Stat. 1879; re-en. Sec. 491, 1st Div. Comp. Stat. 1887; amd. Sec. 1834, C. Civ. Proc. 1895; re-en. Sec. 7149, Rev. C. 1907; re-en. Sec. 9782, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1014; re-en. Sec. 9782, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1963; R.C.M. 1947, 93-8505.

Cross-References

Actual and constructive notice, 1-1-217.

25-3-402. Persons to be served. Subject to the provisions of Rule 5(b), M.R.Civ.P., whenever a plaintiff or a defendant who has appeared resides out of this state and has no attorney in the action or proceeding, service may be made on the clerk of court for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except of subpoenas, writs, and other process issued in the suit and papers to bring him into contempt, unless the court orders otherwise.

History: **En. Sec. 495, p. 232, L. 1867; re-en. Sec. 575, p. 153, Cod. Stat. 1871; re-en. Sec. 479, p. 168, L. 1877; re-en. Sec. 479, 1st Div. Rev. Stat. 1879; re-en. Sec. 492, 1st Div. Comp. Stat. 1887; re-en. Sec. 1835, C. Civ. Proc. 1895; re-en. Sec. 7150, Rev. C. 1907; re-en. Sec. 9783, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1015; re-en. Sec. 9783, R.C.M. 1935; R.C.M. 1947, 93-8506; amd. Sec. 85, Ch. 575, L. 1981.**

Part 5

Alternative Methods of Service

Part Cross-References

Service by publication, Rule 4D(5), M.R.Civ.P. (see Title 25, ch. 20).

25-3-501. Service of telephonic or telegraphic copy. (1) Any summons, writ, or order in any civil action or proceeding and all other papers requiring service may be transmitted by telegraph or telephone for such service in any place; and the telegraphic or telephonic copy of such writ, order, or paper so transmitted may be served or executed by the officer or person to whom it is sent for that purpose and returned by him, if any return be requisite, in the same manner and with the same force and effect in all respects as the original thereof might be delivered to him; and the officer or person serving or executing the same has the same authority and is subject to the same liabilities as if the copy were the original.

(2) The original, when a writ or order, must also be filed in the court from which it was issued, and a certified copy thereof must be preserved in the telegraph or telephone office from which it is sent. In sending it, either the original or certified copy may be used by the operator for that purpose. Whenever any document to be sent by telegraph or telephone bears a seal, either private or official, it is not necessary for the operator, in sending the same, to telegraph or telephone a description of the seal or any words or device thereon, but the same may be expressed in the telegraphic or telephonic copy by the letters "L.S." or by the word "seal".

History: **En. Sec. 1837, C. Civ. Proc. 1895; re-en. Sec. 7152, Rev. C. 1907; re-en. Sec. 9785, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1017; re-en. Sec. 9785, R.C.M. 1935; R.C.M. 1947, 93-8508.**

Cross-References

Contents of writings, recordings, and photographs, Art. X, M.R.Ev. (see Title 26, ch. 10).

25-3-502. Publication to be once a week. Where not otherwise expressly prescribed by law, all rules, orders, and decrees of court, summonses, and notices of all kinds, whether given by any court, judge, or clerk thereof or by any other officer, board, or commission, which by the laws of this state are required to be published in any newspaper shall be published once a week during the time prescribed by law for publication thereof, whether such publication be made in a weekly, semiweekly, triweekly, or daily newspaper.

History: En. Sec. 1, Ch. 104, L. 1917; re-en. Sec. 9833, R.C.M. 1921; re-en. Sec. 9833, R.C.M. 1935; R.C.M.1947, 93-8718.

Cross-References

Week defined, 1-1-301.

Service of process by publication, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

25-3-503. What suffices as once a week. Whenever any statute of Montana requires the publication of any notice, order, or other paper or document in any newspaper once a week for any specified number of weeks, it shall be sufficient to so publish the same once each week for such number of times as shall equal the number of weeks so designated.

History: En. Sec. 1, Ch. 76, L. 1929; re-en. Sec. 9833.1, R.C.M. 1935; R.C.M. 1947, 93-8719.

Cross-References

Week defined, 1-1-301.

25-3-504. Designating unknown persons as defendants. (1) In the situations listed in Rule 4D(5)(a), M.R.Civ.P., persons whose names are unknown to plaintiff may be made parties defendant, either on the filing of the complaint, cross complaint, or complaint in intervention, as the case may be, or at any time thereafter by amendment thereof, by the name and description of unknown owners, unknown heirs, or unknown devisees of any deceased person or by all of such designations.

(2) (a) When persons are made parties defendant by the designation of unknown owners, it shall not be necessary to add to such designation in the title of the action a description of the property involved, whether real, personal, or mixed, of which such persons are claimed or supposed to be unknown owners or claimants or parties in interest, but a description of the property involved shall be included in the body of the summons for publication in the action.

(b) When persons are made defendant by the style and description of unknown heirs or devisees, there shall be added to such designation of them the name of the deceased person of whom they shall be claimed or supposed to be the heirs or devisees.

History: En. Sec. 1, Ch. 105, L. 1941; amd. Sec. 1, Ch. 179, L. 1943; R.C.M. 1947, 93-2819; amd. Sec. 86, Ch. 575, L. 1981.

Cross-References

Definition of person, Rule 4A, M.R.Civ.P. (see Title 25, ch. 20).

Caption and name of parties, Rule 10(a), M.R.Civ.P. (see Title 25, ch. 20).

Misjoinder and nonjoinder of parties, Rule 21, M.R.Civ.P. (see Title 25, ch. 20).

Determination of members of class in class action, Rule 23(c), M.R.Civ.P. (see Title 25, ch. 20).

25-3-505. Effect of service by publication upon unknown persons. Judgments and decrees rendered in actions or proceedings when persons have been so made parties and served by publication of summons shall have the effect prescribed in Rule 4D(5)(b), M.R.Civ.P. If such persons are made parties by the designation of:

(1) unknown heirs, the judgment or decree shall be conclusive as to all heirs of such deceased party;

(2) unknown devisees, the judgment or decree in such proceedings shall be conclusive as against all devisees of such deceased person;

(3) unknown owners, the judgment or decree rendered in such action or proceeding shall be conclusive as against the world, including persons with contingent interests in the controversy and persons not in being who may have an interest or contingent interest therein.

History: En. Sec. 2, Ch. 105, L. 1941; R.C.M. 1947, 93-2820; amd. Sec. 87, Ch. 575, L. 1981.

Cross-References

Default, Rule 55, M.R.Civ.P. (see Title 25, ch. 20).

Part 6

Service on Secretary of State — Nonresident Motorists

Part Cross-References

Duties of Secretary of State, 2-15-401.

Service on Secretary of State, Rule 4D(6), M.R.Civ.P. (see Title 25, ch. 20).

25-3-601. Conditional granting of use of highways to nonresidents. Subject to a compliance with the motor vehicle laws of this state and the acceptance of the provisions of this part and 25-10-206, nonresident owners and operators of motor vehicles hereby are granted the privilege of using the highways, roads, and streets of this state and its political subdivisions, and the use of such highways, roads, and streets shall be deemed and construed to be an acceptance of the provisions of this part and 25-10-206.

History: En. Sec. 1, Ch. 10, L. 1937; R.C.M. 1947, 53-201.

Cross-References

Motor vehicle equipment, Title 61, ch. 9.

Traffic regulations, Title 61, ch. 8.

Motor vehicle licenses, Title 61, ch. 3.

25-3-602. Operation of vehicle considered consent to service on secretary of state. The acceptance by a nonresident of the rights and privileges conferred by the laws of this state to use the highways, roads, and streets of the state and its political subdivisions, as evidenced by his operating a motor vehicle thereon, shall be deemed equivalent to and construed to be an appointment by such nonresident of the secretary of state of the state of Montana to be his true and lawful attorney upon whom may be served all lawful summonses and processes against him growing out of any accident, collision, or liability in which said nonresident may be involved while operating a motor vehicle upon such highways, roads, and streets; and said acceptance or operation shall be a signification of his agreement that any summons or process against him which is so served shall be of the same legal force and validity as if served on him personally within the state of Montana.

History: En. Sec. 2, Ch. 10, L. 1937; R.C.M. 1947, 53-202.

Cross-References

Service on Secretary of State, Rule 4D(6), M.R.Civ.P. (see Title 25, ch. 20).

25-3-603. Operation of vehicle by agent. The operation by any person, by himself or his agent, of any motor vehicle, whether registered or unregistered and with or without a license to operate, on any public way in this state shall be deemed equivalent to an appointment by such person of the secretary of state or his successor in office to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceeding against him growing out of an accident or collision in which he or his agent may be involved while operating a motor vehicle on any public way in this state; and such operation shall be a signification of an agreement by such person that any such process against him which is served upon the secretary of state or his successor in office shall be of the same force and validity as if served upon him personally. This section shall not apply in case of any cause of action, for the service of process in which provision is made by 25-3-602, nor shall it authorize service of process upon any person who may with due diligence be found and personally served with process within the state of Montana.

History: **En. Sec. 3, Ch. 10, L. 1937; R.C.M. 1947, 53-203.**

Cross-References

Personal service within state, Rule 4D(2), M.R.Civ.P. (see Title 25, ch. 20).

Agency, Title 28, ch. 10.

25-3-604. Secretary of state's record of process served. The secretary of state shall keep a record of all such summonses and process, which shall show the day of service.

History: **En. Sec. 6, Ch. 10, L. 1937; R.C.M. 1947, 53-206.**

Cross-References

Public records, Title 2, ch. 6.

CHAPTER 4

PLEADINGS, MOTIONS, AND OTHER PAPERS

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Part 1
General Provisions

25-4-101. Motions and orders — where made. (1) Motions must be made in the county in which the action is brought or in any adjoining county in the same district. In case of the absence of the judge of the district from his district or in an action pending in which such judge is disqualified to act, such motion may be made before the judge of any adjoining district unless there is another judge in the same district who is not disqualified to act, in which case such motion shall be made before another judge in the same district.

(2) Orders made out of court may be made by the judge of the court in any part of the state.

History: En. Sec. 418, p. 128, Bannack Stat.; re-en. Sec. 487, p. 231, L. 1867; amd. Sec. 567, p. 151, Cod. Stat. 1871; amd. Sec. 470, p. 166, L. 1877; re-en. Sec. 470, 1st Div. Rev. Stat. 1879; re-en. Sec. 483, 1st Div. Comp. Stat. 1887; re-en. Sec. 1821, C. Civ. Proc. 1895; re-en. Sec. 7140, Rev. C. 1907; re-en. Sec. 9773, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1004; re-en. Sec. 9773, R.C.M. 1935; R.C.M. 1947, 93-8402; amd. Sec. 88, Ch. 575, L. 1981.

Cross-References

Definition of districts and assignment of judges, Title 3, ch. 5, part 1.

Powers of judges at chambers, 3-5-311.

Jurisdiction of judges coextensive with the state, 3-5-312.

Terms and location of District Courts, Title 3, ch. 5, part 4.

Motions and other papers, Rule 7(b), M.R.Civ.P. (see Title 25, ch. 20).

Hearings outside district upon stipulation of parties, Rule 77(b), M.R.Civ.P. (see Title 25, ch. 20).

25-4-102. Transfer when judge unable to hear motion or return of order. When a notice of motion is given or an order to show cause is made returnable before a judge out of court and, at the time fixed for the motion or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by his order to some other judge.

History: En. Sec. 420, p. 129, Bannack Stat.; re-en. Sec. 489, p. 231, L. 1867; re-en. Sec. 569, p. 152, Cod. Stat. 1871; re-en. Sec. 472, p. 166, L. 1877; re-en. Sec. 472, 1st Div. Rev. Stat. 1879; re-en. Sec. 485, 1st Div. Comp. Stat. 1887; amd. Sec. 1823, C. Civ. Proc.

1895; re-en. Sec. 7142, Rev. C. 1907; re-en. Sec. 9775, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1006; re-en. Sec. 9775, R.C.M. 1935; R.C.M. 1947, 93-8404.

Cross-References

Motions and other papers, Rule 7(b), M.R.Civ.P. (see Title 25, ch. 20).

25-4-103. Vacating or modifying order made without notice. An order made out of court without notice to the adverse party may be vacated or modified, without notice, by the judge who made it, or it may be vacated or modified on notice in the manner in which other motions are made.

History: En. Sec. 249, p. 94, Bannack Stat.; re-en. Sec. 318, p. 199, L. 1867; re-en. Sec. 367, p. 107, Cod. Stat. 1871; re-en. Sec. 406, p. 149, L. 1877; re-en. Sec. 406, 1st Div. Rev. Stat. 1879; re-en. Sec. 419, 1st Div. Comp. Stat. 1887; re-en. Sec. 1824, C. Civ. Proc. 1895; re-en. Sec. 7143, Rev. C. 1907; re-en. Sec. 9776, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 937; re-en. Sec. 9776, R.C.M. 1935; R.C.M. 1947, 93-8405.

25-4-104 through 25-4-110 reserved.

25-4-111. Lost papers. If an original pleading or paper be lost, the court may authorize a copy thereof to be filed and used instead of the original.

History: En. Sec. 1891, C. Civ. Proc. 1895; re-en. Sec. 7184, Rev. C. 1907; re-en. Sec. 9817, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1045; re-en. Sec. 9817, R.C.M. 1935; R.C.M. 1947, 93-8702.

25-4-112. Papers with technical defects. An affidavit, notice, or other paper without the title of the action or proceeding in which it is made or with a defective title is as valid and effectual for any purpose as if duly entitled if it intelligibly refers to such action or proceeding.

History: En. Sec. 424, p. 129, Bannack Stat.; re-en. Sec. 502, p. 233, L. 1867; re-en. Sec. 579, p. 153, Cod. Stat. 1871; re-en. Sec. 520, p. 177, L. 1877; re-en. Sec. 520, 1st Div. Rev. Stat. 1879; re-en. Sec. 537, 1st Div. Comp. Stat. 1887; re-en. Sec. 1892, C. Civ. Proc. 1895; re-en. Sec. 7185, Rev. C. 1907; re-en. Sec. 9818, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1046; re-en. Sec. 9818, R.C.M. 1935; R.C.M. 1947, 93-8703.

Cross-References

Caption — names of parties, Rule 10(a), M.R.Civ.P. (see Title 25, ch. 20).

Part 2

Pleadings in General

Part Cross-References

Pleadings allowed — form of motions, Rule 7, M.R.Civ.P. (see Title 25, ch. 20).

General rules of pleading, Rule 8, M.R.Civ.P. (see Title 25, ch. 20).

Form of pleadings, Rule 10, M.R.Civ.P. (see Title 25, ch. 20).

25-4-201. Description of real property in complaint. In an action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer, upon execution, to identify it.

History: En. Sec. 100, p. 64, L. 1877; re-en. Sec. 100, 1st Div. Rev. Stat. 1879; re-en. Sec. 102, 1st Div. Comp. Stat. 1887; re-en. Sec. 744, C. Civ. Proc. 1895; re-en. Sec. 6570, Rev. C. 1907; re-en. Sec. 9168, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 455; re-en. Sec. 9168, R.C.M. 1935; R.C.M. 1947, 93-3805.

Cross-References

Corner Recordation Act of Montana, Title 70, ch. 22, part 1.

Montana coordinate system, Title 70, ch. 22, part 2.

25-4-202. Copy of written instrument in pleading. The insertion in a pleading of a copy of a written instrument is equivalent to setting forth the instrument according to its legal effect.

History: En. Sec. 748, C. Civ. Proc. 1895; re-en. Sec. 6574, Rev. C. 1907; re-en. Sec. 9172, R.C.M. 1921; re-en. Sec. 9172, R.C.M. 1935; R.C.M. 1947, 93-3809.

Cross-References

Adoption by reference — exhibits, Rule 10(c), M.R.Civ.P. (see Title 25, ch. 20).

25-4-203. Verification of pleadings. (1) In any case in which an affidavit of verification is required, except as otherwise specifically provided, such affidavit of verification must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters therein stated on information and belief, and that as to those he believes it to be true. Such verification must be made by the party or, if there are several parties united in interest or pleading, by one at least of such parties acquainted with the facts if such party is in the county and capable of making the affidavit. The verification may also be made by the agent or attorney of the party if the party is absent from the county where the attorney resides or is from any other cause unable to verify the pleading, and in such case the verification must state that the deponent is the agent or attorney of the party, the reason why such verification is made by such agent or attorney, and that the matters stated in the pleadings are true to the best knowledge, information, and belief of such agent or attorney.

(2) When a corporation is a party, the verification may be made by any officer thereof and must state what officer he is and that the matters stated therein are true to the best knowledge, information, and belief of such officer. If there is no officer of the corporation within the county, the verification may be made by its attorney.

History: En. Sec. 55, p. 144, L. 1867; amd. Sec. 9, p. 64, L. 1869; amd. Sec. 63, p. 39, Cod. Stat. 1871; re-en. Sec. 94, p. 62, L. 1877; re-en. Sec. 94, 1st Div. Rev. Stat. 1879; re-en. Sec. 96, 1st Div. Comp. Stat. 1887; en. Sec. 731, C. Civ. Proc. 1895; re-en. Sec. 6565, Rev. C. 1907; re-en. Sec. 9163, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 446; re-en. Sec. 9163, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1963; R.C.M. 1947, 93-3702.

Cross-References

Signing of pleadings, Rule 11, M.R.Civ.P. (see Title 25, ch. 20).

False swearing, 45-7-202.

25-4-204. Time for amendment or reply after motion on pleading. When a motion concerning a pleading is sustained or overruled and time to amend, answer, or reply is given, the time so given runs from service of notice of the decision or order, except when the party against whom the decision is made is in court. In such case the time runs from the making of the decision or order.

History: En. Sec. 779, C. Civ. Proc. 1895; re-en. Sec. 6594, Rev. C. 1907; re-en. Sec. 9192, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 476; re-en. Sec. 9192, R.C.M. 1935; amd. Sec. 2, Ch. 8, L. 1937; R.C.M. 1947, 93-3910; amd. Sec. 89, Ch. 575, L. 1981.

Cross-References

Costs of motion, 25-10-202.

Time for reply after motion, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

Part 3
Pleading Special Matters

Part Cross-References

Pleading special matters, Rule 9, M.R.Civ.P. (see Title 25, ch. 20).

Pleading licensure in action to collect brokerage commission, 37-51-401.

Consideration of mistake or imperfection in grant of real property, 70-20-202.

25-4-301. Pleading statute of limitations. In pleading the statute of limitations, it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of section .... (giving the number of the section and subsection thereof, if it is so divided, relied upon). If such allegation be controverted, the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.

History: En. Sec. 103, p. 64, L. 1877; re-en. Sec. 103, 1st Div. Rev. Stat. 1879; re-en. Sec. 105, 1st Div. Comp. Stat. 1887; re-en. Sec. 749, C. Civ. Proc. 1895; re-en. Sec. 6575, Rev. C. 1907; re-en. Sec. 9173, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 458; re-en. Sec. 9173, R.C.M. 1935; R.C.M. 1947, 93-3810.

Cross-References

Limitation on actions involving public contracts, 18-1-402.

Limitations on commencement of civil actions, 25-1-102.

Statutes of Limitations, Title 27, ch. 2.

Statute of Limitations in contracts for sale, 30-2-725.

25-4-302. Pleading an account. It is not necessary for a party to set forth in a pleading the items of an account therein alleged, but he must deliver to the adverse party, within 5 days or such further time as the court may allow or may be agreed to by the parties, after a demand thereof in writing, a copy of the account or be precluded from giving evidence thereof. The court or judge thereof may order a further account when the one delivered is too general or is defective in any particular.

History: En. Sec. 55, p. 53, Bannack Stat.; amd. Sec. 56, p. 145, L. 1867; re-en. Sec. 64, p. 40, Cod. Stat. 1871; re-en. Sec. 99, p. 64, L. 1877; re-en. Sec. 99, 1st Div. Rev. Stat. 1879; re-en. Sec. 101, 1st Div. Comp. Stat. 1887; amd. Sec. 743, C. Civ. Proc. 1895; re-en. Sec. 6569, Rev. C. 1907; re-en. Sec. 9167, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 454; re-en. Sec. 9167, R.C.M. 1935; R.C.M. 1947, 93-3804.

25-4-303. True value of property — action for taking. When, in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property and the officer taking the property or the sureties on any bond or undertaking are sued for taking the same, the officer or sureties may, in their answer, set up the true value of the property and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made or that the value in the affidavit stated was inserted by mistake, whereupon the court must disregard the value as stated in the affidavit.

History: En. Sec. 115, p. 67, L. 1877; re-en. Sec. 115, 1st Div. Rev. Stat. 1879; re-en. Sec. 117, 1st Div. Comp. Stat. 1887; amd. Sec. 775, C. Civ. Proc. 1895; re-en. Sec. 6590, Rev. C. 1907; re-en. Sec. 9188, R.C.M. 1921; re-en. Sec. 9188, R.C.M. 1935; R.C.M. 1947, 93-3906.

Cross-References

Affidavits as evidence, Title 26, ch. 1, part 10.

Actions for claim and delivery, Title 27, ch. 17, part 1.

25-4-304 through 25-4-310 reserved.

25-4-311. Damages for personal injury or wrongful death not to be stated. In an action for the recovery of money or damages for personal injury or wrongful death, the amount thereof may not be stated in the claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim.

History: En. 93-2721 by Sec. 1, Ch. 525, L. 1977; R.C.M. 1947, 93-2721.

Cross-References

Counterclaim and cross-claim, Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

Third-party practice, Rule 14, M.R.Civ.P. (see Title 25, ch. 20).

Damages for wrongful death or personal injuries inflicted by dueling, 27-1-223.

Wrongful death, 27-1-323.

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

Action for wrongful death of adult, 27-1-513.

25-4-312. Request for statement of damages — response. When an action is filed in the district court to recover damages for personal injury or wrongful death, the parties against whom the action is brought may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be filed and served upon the claimant, who shall file and serve a responsive statement as to damages within 15 days thereafter. In the event that a response is not served, the party, on notice to the claimant, may petition the court in which the action is pending to order the claimant to serve a responsive statement.

History: En. 93-2722 by Sec. 2, Ch. 525, L. 1977; R.C.M. 1947, 93-2722.

Cross-References

Damages for wrongful death, 27-1-323.

Action by parent or guardian for injuries to or wrongful death of child or ward, 27-1-512.

Action for wrongful death of adult, 27-1-513.

25-4-313. Notice to defendant when no request for statement. If no request is made for such a statement setting forth the nature and amount of damages being sought, the claimant shall give notice to the defendant of the amount of special and general damages sought to be recovered:

(1) before a default may be taken; or

(2) in the event an answer is filed, at least 45 days prior to the date set for the trial.

History: En. 93-2723 by Sec. 3, Ch. 525, L. 1977; R.C.M. 1947, 93-2723.

25-4-314. Permissive delivery of statement with summons. A copy of the statement setting forth the nature and amount of damages being sought may be delivered to the defendant at the time of service of the summons and complaint but may not be filed for 20 days after the complaint is filed.

History: En. 93-2724 by Sec. 4, Ch. 525, L. 1977; R.C.M. 1947, 93-2724.

Part 4

Counterclaim and Cross-Claim

Part Cross-References

Notice of counterclaim or cross-claim to be given to Attorney General, 25-1-501.

Mode of trial of counterclaim, 25-7-104.

Service of counterclaim or cross-claim on numerous defendants, Rule 5(c), M.R.Civ.P. (see Title 25, ch. 20).

Pleading counterclaim and cross-claim, Rule 7(a), M.R.Civ.P. (see Title 25, ch. 20).

Designation of counterclaim as defense, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).

Time for service of counterclaim and cross-claim, Rule 12(a), M.R.Civ.P. (see Title 25, ch. 20).

Counterclaim and cross-claim, Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

Counterclaims and cross-claims against third parties, Rule 14(a), M.R.Civ.P. (see Title 25, ch. 20).

Joinder of claims, Rule 18(a), M.R.Civ.P. (see Title 25, ch. 20).

Dismissal of counterclaim and cross-claim, Rules 41(a) and 41(c), M.R.Civ.P. (see Title 25, ch. 20).

Default to counterclaim or cross-claim, Rule 55(d), M.R.Civ.P. (see Title 25, ch. 20).

Summary judgment on counterclaim or cross-claim, Rules 56(a) and 56(b), M.R.Civ.P. (see Title 25, ch. 20).

Availability of provisional remedies to defendant interposing counterclaim, 27-15-102.

25-4-401. Counterclaim by person sued in representative capacity. In an action against an executor or administrator or other person sued in a representative capacity, the defendant may set forth as a counterclaim a demand belonging to the decedent or other person whom he represents where the person so represented would have been entitled to set forth the same in an action against him.

History: En. Sec. 695, C. Civ. Proc. 1895; re-en. Sec. 6545, Rev. C. 1907; re-en. Sec. 9142, R.C.M. 1921; re-en. Sec. 9142, R.C.M. 1935; R.C.M. 1947, 93-3406.

Cross-References

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Powers and duties of personal representative, Title 72, ch. 3, part 6.

25-4-402. Counterclaim against person suing in representative capacity. In an action brought by an executor or administrator in his representative capacity, a demand against the decedent belonging at the time of his death to the defendant may be set forth by the defendant as a counterclaim as if the action had been brought by the decedent in his lifetime, and if a balance is found to be due the defendant, judgment must be rendered therefor against the plaintiff in his representative capacity. Execution can be issued upon such a judgment only in a case where it could be issued upon a judgment in an action against the executor or administrator.

History: En. Sec. 696, C. Civ. Proc. 1895; re-en. Sec. 6546, Rev. C. 1907; re-en. Sec. 9143, R.C.M. 1921; re-en. Sec. 9143, R.C.M. 1935; R.C.M. 1947, 93-3407.

Cross-References

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Powers and duties of personal representative, Title 72, ch. 3, part 6.

25-4-403. Counterclaim in action on contract. A counterclaim on a contract is subject to the following rules:

(1) Except as otherwise provided by the Uniform Commercial Code, if the action is founded upon a contract which has been assigned by the party thereto, a demand existing against the party thereto or an assignee of the contract at the time of the assignment thereof and belonging to the defendant, in good faith, before notice of the assignment must be allowed as a counterclaim to the amount of the plaintiff's demand if it might have been so allowed against the party or the assignee while the contract belonged to him.

(2) If the plaintiff is a trustee for another or if the action is in the name of the plaintiff who has no actual interest in the contract upon which it is founded, a demand against the plaintiff shall not be allowed as a counterclaim, but so much of a demand existing against the person whom he represents or for whose benefit the action is brought as will satisfy the plaintiff's demand must be allowed as a counterclaim if it might have been so allowed in an action brought by the person beneficially interested.

History: En. Sec. 692, C. Civ. Proc. 1895; re-en. Sec. 6542, Rev. C. 1907; re-en. Sec. 9139, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 438; re-en. Sec. 9139, R.C.M. 1935; amd. Sec. 11-158, Ch. 264, L. 1963; R.C.M. 1947, 93-3403.

Cross-References

Application of rules on transfers to assignments, 28-2-907.

Successive actions on same contract, 28-2-1501.

Assignment of contracts, 30-2-210.

25-4-404. Cross-claim to be asserted in answer. Where the judgment may determine the ultimate rights of two or more defendants as between themselves, a defendant who requires such a determination must demand it in his answer. The controversy between the defendants must not delay a judgment to which the plaintiff is entitled unless the court otherwise directs.

History: En. Sec. 753, C. Civ. Proc. 1895; re-en. Sec. 6579, Rev. C. 1907; re-en. Sec. 9177, R.C.M. 1921; re-en. Sec. 9177, R.C.M. 1935; R.C.M. 1947, 93-3814.

Cross-References

Rights and justice to be administered without sale, denial, or delay, Art. II, sec. 16, Mont. Const.

Speedy remedy for every injury of person, property, or character, Art. II, sec. 16, Mont. Const.

Third-party practice, Rule 14, M.R.Civ.P. (see Title 25, ch. 20).

Part 5
Motion to Postpone Trial

Part Cross-References

Costs of postponement, 25-10-203.

25-4-501. Motion to postpone trial for absence of testimony. A motion to postpone a trial on grounds of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained and that due diligence has been used to procure it.

History: En. Sec. 130, p. 69, Bannack Stat.; re-en. Sec. 158, p. 163, L. 1867; en. Sec. 194, p. 65, Cod. Stat. 1871; re-en. Sec. 244, p. 98, L. 1877; re-en. Sec. 244, 1st Div. Rev. Stat. 1879; re-en. Sec. 253, 1st Div. Comp. Stat. 1887; re-en. Sec. 1039, C. Civ. Proc. 1895; re-en. Sec. 6729, Rev. C. 1907; re-en. Sec. 9332, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 595; re-en. Sec. 9332, R.C.M. 1935; R.C.M. 1947, 93-4910(part).

Cross-References

Affidavits as evidence, Title 26, ch. 1, part 10.

25-4-502. No postponement when expected evidence admitted. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admits that such evidence would be given and that it be considered as actually given on the trial or offered and overruled as improper, the trial shall not be postponed.

History: En. Sec. 130, p. 69, Bannack Stat.; re-en. Sec. 158, p. 163, L. 1867; en. Sec. 194, p. 65, Cod. Stat. 1871; re-en. Sec. 244, p. 98, L. 1877; re-en. Sec. 244, 1st Div. Rev. Stat. 1879; re-en. Sec. 253, 1st Div. Comp. Stat. 1887; re-en. Sec. 1039, C. Civ. Proc. 1895; re-en. Sec. 6729, Rev. C. 1907; re-en. Sec. 9332, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 595; re-en. Sec. 9332, R.C.M. 1935; R.C.M. 1947, 93-4910(part).

25-4-503. Postponement on other grounds. Upon good cause shown and in furtherance of justice, the court may, in its discretion, postpone a trial or proceeding upon other grounds than the absence of evidence under such conditions as the court may direct.

History: En. Sec. 130, p. 69, Bannack Stat.; re-en. Sec. 158, p. 163, L. 1867; en. Sec. 194, p. 65, Cod. Stat. 1871; re-en. Sec. 244, p. 98, L. 1877; re-en. Sec. 244, 1st Div. Rev. Stat. 1879; re-en. Sec. 253, 1st Div. Comp. Stat. 1887; re-en. Sec. 1039, C. Civ. Proc. 1895; re-en. Sec. 6729, Rev. C. 1907; re-en. Sec. 9332, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 595; re-en. Sec. 9332, R.C.M. 1935; R.C.M. 1947, 93-4910(part); amd. Sec. 90, Ch. 575, L. 1981.

Cross-References

Postponement to judicial day, 3-1-303.

Postponement for defense, Rule 4D(6)(b), M.R.Civ.P. (see Title 25, ch. 20).

Postponement for amendments, Rule 15(b), M.R.Civ.P. (see Title 25, ch. 20).

Postponement to obtain affidavits, Rule 56(f), M.R.Civ.P. (see Title 25, ch. 20).

Postponement for motion for new trial, Rule 59(d), M.R.Civ.P. (see Title 25, ch. 20).

25-4-504. Depositions of witnesses upon postponement. The party obtaining a postponement of a trial in any court of record must, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance be then taken by deposition before a judge or clerk of the court in which the case is pending or before such notary public as the court may indicate, which must accordingly be done, and the testimony so taken may be read on the trial with the same effect and subject to the same objections as if the witnesses were produced.

History: En. Sec. 447, p. 133, Bannack Stat.; re-en. Sec. 604, p. 158, Cod. Stat. 1871; re-en. Sec. 245, p. 99, L. 1877; re-en. Sec. 245, 1st Div. Rev. Stat. 1879; re-en. Sec. 254, 1st Div. Comp. Stat. 1887; amd. Sec. 1040, C. Civ. Proc. 1895; re-en. Sec. 6730, Rev. C. 1907; re-en. Sec. 9333, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 596; re-en. Sec. 9333, R.C.M. 1935; R.C.M. 1947, 93-4911.

Cross-References

Deposition defined, 1-1-202.

Before notary public, 1-5-416.

Person before whom depositions may be taken, Rule 28, M.R.Civ.P. (see Title 25, ch. 20).

Depositions upon oral examination, Rule 30, M.R.Civ.P. (see Title 25, ch. 20).

Use of depositions, Rule 32, M.R.Civ.P. (see Title 25, ch. 20).

Part 6

Procedure After Claims Partially Admitted

Part Cross-References

Effect of failure to deny, Rule 8(d), M.R.Civ.P. (see Title 25, ch. 20).

Motion for judgment on the pleadings, Rule 12(c), M.R.Civ.P. (see Title 25, ch. 20).

25-4-601. Procedure when answer admits part of plaintiff's claim. Where the answer of the defendant, expressly or by not denying, admits a part of the plaintiff's claim to be just, the court, upon the plaintiff's motion, may, in its discretion, order that the action be severed, that a judgment be entered for the plaintiff for the part so admitted, and if the plaintiff so elects, that the action be continued with like effect as to the subsequent proceedings as if it had been originally brought for the remainder of the claim. The order must prescribe the time and manner of the plaintiff's election. If the plaintiff elects to continue the action, his right to costs upon the judgment is the same as if it were taken in an action brought for only that part of the claim. If the plaintiff does not elect to continue the action, costs must be awarded as upon final judgment in any other case.

History: En. Sec. 702, C. Civ. Proc. 1895; re-en. Sec. 6552, Rev. C. 1907; re-en. Sec. 9149, R.C.M. 1921; re-en. Sec. 9149, R.C.M. 1935; R.C.M. 1947, 93-3413.

Cross-References

Costs, Title 25, ch. 10.

Separate trials — separate judgment, Rules 13(i), 20(b), 42(b), M.R.Civ.P. (see Title 25, ch. 20).

Costs, Rule 54(d), M.R.Civ.P. (see Title 25, ch. 20).

25-4-602. Judgment for excess when plaintiff admits counterclaim. In an action upon contract where the complaint demands judgment for a sum of money only, if the defendant by his answer does not deny the plaintiff's claim but sets up a counterclaim amounting to less than the plaintiff's claim, the plaintiff, upon filing with the clerk an admission of the counterclaim, may take judgment for the excess, as upon a default for want of an answer.

History: En. Sec. 703, C. Civ. Proc. 1895; re-en. Sec. 6553, Rev. C. 1907; re-en. Sec. 9150, R.C.M. 1921; re-en. Sec. 9150, R.C.M. 1935; R.C.M. 1947, 93-3414; amd. Sec. 91, Ch. 575, L. 1981.

Cross-References

Counterclaim and cross-claim, Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

Default, Rule 55, M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 5

PARTIES

Part 1 — Designation of Parties

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Chapter Cross-References

Parties, Rule 17, M.R.Civ.P. (see Title 25, ch. 20).

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Part 1

Designation of Parties

Part Cross-References

Caption and name of parties, Rule 10(a), M.R.Civ.P. (see Title 25, ch. 20).

25-5-101. Names of parties. In a civil action, the party complaining is known as the plaintiff and the adverse party as the defendant. The party prosecuting a special proceeding may be known as the plaintiff and the adverse party as the defendant.

History: Ap. p. Sec. 2, p. 43, Bannack Stat.; re-en. Sec. 2, p. 136, L. 1867; re-en. Sec. 2, p. 28, Cod. Stat. 1871; re-en. Sec. 2, p. 40, L. 1877; re-en. Sec. 2, 1st Div. Rev. Stat. 1879; re-en. Sec. 2, 1st Div. Comp. Stat. 1887; re-en. Sec. 461, C. Civ. Proc. 1895; re-en. Sec. 6426, Rev. C. 1907; re-en. Sec. 9009, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 308; re-en. Sec. 9009, R.C.M. 1935; Sec. 93-2302, R.C.M. 1947; Ap. p. Sec. 1930, C. Civ. Proc. 1895; re-en. Sec. 7200, Rev. C. 1907; re-en. Sec. 9834, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1063; re-en. Sec. 9834, R.C.M. 1935; Sec. 93-8801, R.C.M. 1947; R.C.M. 1947, 93-2302, 93-8801.

Cross-References

One form of civil action, 25-1-101.

Action defined, 25-1-102.

25-5-102. Use of abbreviated names. It is sufficient in all actions, papers, pleadings, or proceedings to designate any party or person by the initial letter or letters or some contraction of the first name or names, instead of stating the first name in full.

History: En. Sec. 68, p. 55, Bannack Stat.; re-en. Sec. 69, p. 147, L. 1867; re-en. Sec. 77, p. 42, Cod. Stat. 1871; re-en. Sec. 116, p. 67, L. 1877; re-en. Sec. 116, 1st Div. Rev. Stat. 1879; en. Sec. 1, p. 55, L. 1885; re-en. Sec. 118, 1st Div. Comp. Stat. 1887; re-en. Sec. 777, C. Civ. Proc. 1895; re-en. Sec. 6592, Rev. C. 1907; re-en. Sec. 9190, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 474; re-en. Sec. 9190, R.C.M. 1935; R.C.M. 1947, 93-3908(part).

25-5-103. Suing a party by a fictitious name. When the plaintiff is ignorant of the name of the defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name is discovered, the pleadings or proceedings may be amended accordingly.

History: En. Sec. 68, p. 55, Bannack Stat.; re-en. Sec. 69, p. 147, L. 1867; re-en. Sec. 77, p. 42, Cod. Stat. 1871; re-en. Sec. 116, p. 67, L. 1877; re-en. Sec. 116, 1st Div. Rev. Stat. 1879; en. Sec. 1, p. 55, L. 1885; re-en. Sec. 118, 1st Div. Comp. Stat. 1887; re-en. Sec. 777, C. Civ. Proc. 1895; re-en. Sec. 6592, Rev. C. 1907; re-en. Sec. 9190, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 474; re-en. Sec. 9190, R.C.M. 1935; R.C.M. 1947, 93-3908(part).

Cross-References

Designating unknown persons as defendants, 25-3-504.

25-5-104. Action against business association. When two or more persons associated in any business transact such business under a common name, whether it comprise the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates in the same manner as if all had been named defendants and had been sued upon their joint liability.

History: En. Sec. 439, p. 132, Bannack Stat.; re-en. Sec. 596, p. 157, Cod. Stat. 1871; amd. Sec. 25, p. 44, L. 1877; re-en. Sec. 25, 1st Div. Rev. Stat. 1879; re-en. Sec. 25, 1st Div. Comp. Stat. 1887; re-en. Sec. 590, C. Civ. Proc. 1895; re-en. Sec. 6497, Rev. C. 1907; re-en. Sec. 9089, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 388; re-en. Sec. 9089, R.C.M. 1935; R.C.M. 1947, 93-2827.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Power of foreign corporation to sue and be sued, 32-1-103.

Power of credit union to sue and be sued, 32-3-401.

Power of religious corporation to sue and be sued, 35-3-205(2).

Power of business trust to sue and be sued, 35-5-103.

Part 2
Capacity to Be a Party — Joinder

Part Cross-References

Capacity, Rule 9(a), M.R.Civ.P. (see Title 25, ch. 20).

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Misjoinder and nonjoinder of parties, Rule 21, M.R.Civ.P. (see Title 25, ch. 20).

Right to bring action or assert defense, Title 27, ch. 1, part 5.

25-5-201. Capacity of married person to be a party. A married person may sue and be sued in the same manner as if such person were sole.

History: En. Sec. 7, 1st Div. Comp. Stat. 1887; re-en. Sec. 572, C. Civ. Proc. 1895; re-en. Sec. 6479, Rev. C. 1907; re-en. Sec. 9069, R.C.M. 1921; re-en. Sec. 9069, R.C.M. 1935; amd. Sec. 48, Ch. 535, L. 1975; R.C.M. 1947, 93-2803.

Cross-References

Action for wrongful death of adult, 27-1-513.

Who may sue for whose seduction, 27-1-514.

Protection of personal relations — abduction, 27-1-515.

Joint interests, obligations, and powers of husband and wife, Title 40, ch. 2, part 1.

25-5-202. Who may defend when spouse sued. If a husband and wife be sued together, each spouse may defend for his or her own right, and if the other spouse neglect to defend, the spouse who does choose to defend may defend for the other spouse's right also.

History: En. Sec. 8, p. 44, Bannack Stat.; re-en. Sec. 8, p. 136, L. 1867; re-en. Sec. 8, p. 28, Cod. Stat. 1871; amd. Sec. 8, p. 41, L. 1877; re-en. Sec. 8, 1st Div. Rev. Stat. 1879; re-en. Sec. 8, 1st Div. Comp. Stat. 1887; re-en. Sec. 573, C. Civ. Proc. 1895; re-en. Sec. 6480, Rev. C. 1907; re-en. Sec. 9070, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 371; re-en. Sec. 9070, R.C.M. 1935; amd. Sec. 49, Ch. 535, L. 1975; R.C.M. 1947, 93-2804.

25-5-203. Defendants — adverse claims to real property. In an action brought by a person out of possession of real property to determine an adverse claim of an interest or estate therein, the person making such adverse claim and the persons in possession may be joined as defendants, and if the judgment be for the plaintiff, he may have a writ for the possession of the premises as against the defendants in the action against whom the judgment has passed.

History: En. Sec. 17, p. 42, L. 1877; re-en. Sec. 17, 1st Div. Rev. Stat. 1879; re-en. Sec. 17, 1st Div. Comp. Stat. 1887; re-en. Sec. 582, C. Civ. Proc. 1895; re-en. Sec. 6489, Rev. C. 1907; re-en. Sec. 9081, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 380; re-en. Sec. 9081, R.C.M. 1935; R.C.M. 1947, 93-2817.

Cross-References

Real property actions — limitations and adverse possession, Title 70, ch. 19.

Forcible entry and unlawful detainer, Title 70, ch. 27.

Quieting title, Title 70, ch. 28.

25-5-204. Joinder of state as defendant in actions affecting title to property. In any action or proceeding brought in any district court of the state affecting the title to real or personal property in which the state has or claims to have an interest or claim, the state may be made a party defendant to such action or proceeding and its rights or interests adjudicated.

History: En. Sec. 1, Ch. 210, L. 1921; re-en. Sec. 9079, R.C.M. 1921; amd. Sec. 1, Ch. 65, L. 1931; re-en. Sec. 9079, R.C.M. 1935; amd. Sec. 8, Ch. 234, L. 1977; R.C.M. 1947, 93-2815.

Cross-References

Notice to Attorney General, Title 25, ch. 1, part 5.

Service on Attorney General required, Rule 4D(2)(h), M.R.Civ.P. (see Title 25, ch. 20).

General rights of state over property, Title 70, ch. 1, part 2.

Quiet title and partition of personal property, Title 70, ch. 2, part 2.

Adverse possession, Title 70, ch. 19.

Forcible entry and unlawful detainer, Title 70, ch. 27.

Quieting title to real property, Title 70, ch. 28.

Part 3
Guardian Ad Litem

25-5-301. Appointment of guardian. When a guardian ad litem is appointed by the court, he must be appointed as follows:

(1) when the minor is plaintiff, upon the application of the minor if he be of the age of 14 years or, if under that age, upon the application of a relative or friend of the minor;

(2) when the minor is defendant, upon the application of the minor if he be of the age of 14 years and apply within 10 days after the service of the summons or, if under that age or if he neglects so to apply, upon the application of a relative or friend of the minor or of any other party to the action;

(3) when an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person or of any other party to the action or proceeding.

History: En. Sec. 10, p. 44, Bannack Stat.; re-en. Sec. 10, p. 136, L. 1867; re-en. Sec. 10, p. 28, Cod. Stat. 1871; re-en. Sec. 10, p. 41, L. 1877; re-en. Sec. 10, 1st Div. Rev. Stat. 1879; re-en. Sec. 10, 1st Div. Comp. Stat. 1887; re-en. Sec. 575, C. Civ. Proc. 1895; re-en. Sec. 6482, Rev. C. 1907; re-en. Sec. 9072, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 373; re-en. Sec. 9072, R.C.M. 1935; R.C.M. 1947, 93-2806; amd. Sec. 2, Ch. 2, L. 1983.

Cross-References

Infants or incompetent persons, Rule 17(c), M.R.Civ.P. (see Title 25, ch. 20).

Incompetency, Rule 25(b), M.R.Civ.P. (see Title 25, ch. 20).

Appointment in paternity action, 40-6-110.

Appointment for abused or neglected child, 41-3-303.

Appointment in youth court proceedings, 41-5-512.

CHAPTER 6
RESERVED

CHAPTER 7
TRIALS

Part 1 — Issues—Mode of Trial

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25-7-401. View by jury of the premises.
25-7-402. Admonition when jury permitted to separate.
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25-7-703. Procedure upon objection.

Chapter Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Part 1
Issues — Mode of Trial

Part Cross-References

Duty of jury in trial for libel or slander, Art. II, sec. 7, Mont. Const.

Trial by jury or the court, Rule 39, M.R.Civ.P. (see Title 25, ch. 20).

Province of court and jury, Title 26, ch. 1, part 2.

25-7-101. Issue defined, types of issues. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

(1) of law; and

(2) of fact.

History: En. Sec. 123, p. 68, Bannack Stat.; re-en. Sec. 151, p. 163, L. 1867; re-en. Sec. 187, p. 64, Cod. Stat. 1871; re-en. Sec. 237, p. 98, L. 1877; re-en. Sec. 237, 1st Div. Rev. Stat. 1879; re-en. Sec. 246, 1st Div. Comp. Stat. 1887; amd. Sec. 1030, C. Civ. Proc. 1895; re-en. Sec. 6720, Rev. C. 1907; re-en. Sec. 9323, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 588; re-en. Sec. 9323, R.C.M. 1935; R.C.M. 1947, 93-4901.

25-7-102. Issues of law to be decided by court. Except as provided in Article II, section 7, of the Montana constitution, all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, are to be decided by the court unless they are referred upon consent, and all discussions of law are to be addressed to the court.

History: Ap. p. Sec. 3441, C. Civ. Proc. 1895; re-en. Sec. 8055, Rev. C. 1907; re-en. Sec. 10699, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2102; re-en. Sec. 10699, R.C.M. 1935; Sec. 93-2501-2, R.C.M. 1947; Ap. p. Sec. 126, p. 68, Bannack Stat.; amd. Sec. 154, p. 163, L. 1867; re-en. Sec. 190, p. 64, Cod. Stat. 1871; re-en. Sec. 240, p. 98, L. 1877; re-en. Sec. 240, 1st Div. Rev. Stat. 1879; re-en. Sec. 249, 1st Div. Comp. Stat. 1887; re-en. Sec. 1032, C. Civ. Proc. 1895; re-en. Sec. 6722, Rev. C. 1907; re-en. Sec. 9325, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 591; re-en. Sec. 9325, R.C.M. 1935; Sec. 93-4903, R.C.M. 1947; R.C.M. 1947, 93-4903, 93-2501-2(part); amd. Sec. 92, Ch. 575, L. 1981.

Cross-References

Jury to determine law and facts in prosecutions for libel and slander, Art. II, sec. 7, Mont. Const.

Trial by jury or by the court, Rule 39, M.R.Civ.P. (see Title 25, ch. 20).

Province of court and jury, Title 26, ch. 1, part 2.

Judicial notice of facts, Rule 201, M.R.Ev. (see Title 26, ch. 10).

Judicial notice of law, Rule 202, M.R.Ev. (see Title 26, ch. 10).

Court to decide questions of law, Rule 202(g), M.R.Ev. (see Title 26, ch. 10).

25-7-103. When issues of fact to be decided by jury. All questions of fact, where the trial is by jury, other than those mentioned in 25-7-102 are to be decided by the jury, and all evidence thereon is to be addressed to them, except when otherwise provided by this code.

History: En. Sec. 3440, C. Civ. Proc. 1895; re-en. Sec. 8054, Rev. C. 1907; re-en. Sec. 10698, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2101; re-en. Sec. 10698, R.C.M. 1935; R.C.M. 1947, 93-2501-1.

Cross-References

Trial by jury or by the court, Rule 39, M.R.Civ.P. (see Title 25, ch. 20).

Province of court and jury, Title 26, ch. 1, part 2.

25-7-104. Mode of trial of counterclaim. Where the defendant interposes a counterclaim and thereupon demands an affirmative judgment against the plaintiff, the mode of trial of an issue of fact arising thereupon is the same as if it arose in an action brought by the defendant against the plaintiff for the cause of action stated in the counterclaim and demanding the same judgment.

History: En. Sec. 1036, C. Civ. Proc. 1895; re-en. Sec. 6726, Rev. C. 1907; re-en. Sec. 9329, R.C.M. 1921; re-en. Sec. 9329, R.C.M. 1935; R.C.M. 1947, 93-4907.

Cross-References

Counterclaim and cross-claim, Title 25, ch. 4, part 4; Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

Part 2

Selection of Jury

Part Cross-References

Right to jury trial, Art. II, sec. 26, Mont. Const.

Juries and jurors, Title 3, ch. 15.

Manner of selection and order of examination of jurors, Rule 47(b), M.R.Civ.P. (see Title 25, ch. 20).

Alternate jurors, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).

25-7-201. When a jury is to be selected. The procedure in this part for selecting a jury must be pursued as often as an issue is brought to trial by a jury.

History: En. Sec. 1054, C. Civ. Proc. 1895; re-en. Sec. 6735, Rev. C. 1907; amd. Sec. 13, Ch. 35, L. 1919; re-en. Sec. 9338, R.C.M. 1921; re-en. Sec. 9338, R.C.M. 1935; R.C.M. 1947, 93-5005(part).

25-7-202. Judge or jury commissioner to draw ballots. When an issue of fact to be tried by a jury is brought to trial, the district judge or jury commissioner in the presence of two witnesses must openly draw out of the trial juror box as many of the ballots with the names of jurors thereon, one after another, as are sufficient to form a jury for the cause to be tried. Upon stipulation of counsel, the court may order such jurors to be seated in the order drawn.

History: En. Sec. 1050, C. Civ. Proc. 1895; re-en. Sec. 6731, Rev. C. 1907; amd. Sec. 10, Ch. 35, L. 1919; re-en. Sec. 9334, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 600; re-en. Sec. 9334, R.C.M. 1935; amd. Sec. 3, Ch. 151, L. 1937; amd. Sec. 3, Ch. 3, L. 1939; R.C.M. 1947, 93-5001; amd. Sec. 12, Ch. 379, L. 1983.

Cross-References

Clerk as jury commissioner, 3-15-502.

Clerk to call list of jurors summoned and prepare ballots, 3-15-507.

25-7-203. Drawing a new jury when another is impaneled. If an issue is brought to trial by a jury while a jury is impaneled in another cause and not then discharged, the court may order a jury for the trial of that issue to be drawn out of the box containing the ballots then undrawn; but in any other case the ballots with the names of all the trial jurors returned and attending the court must be placed together in the same box before a jury is drawn therefrom.

History: En. Sec. 1056, C. Civ. Proc. 1895; re-en. Sec. 6737, Rev. C. 1907; amd. Sec. 15, Ch. 35, L. 1919; re-en. Sec. 9340, R.C.M. 1921; re-en. Sec. 9340, R.C.M. 1935; R.C.M. 1947, 93-5007; amd. Sec. 13, Ch. 379, L. 1983.

25-7-204. Mode of drawing ballots. Before the first ballot shall have been drawn, the box must be closed and well shaken so as to thoroughly mix the ballots therein. The district judge or the jury commissioner must draw at random a ballot with the juror's name thereon. Upon stipulation of counsel, the court may order the clerk to draw ballots.

History: En. Sec. 1051, C. Civ. Proc. 1895; re-en. Sec. 6732, Rev. C. 1907; amd. Sec. 11, Ch. 35, L. 1919; re-en. Sec. 9335, R.C.M. 1921; re-en. Sec. 9335, R.C.M. 1935; amd. Sec. 4, Ch. 151, L. 1937; amd. Sec. 4, Ch. 3, L. 1939; R.C.M. 1947, 93-5002; amd. Sec. 14, Ch. 379, L. 1983; amd. Sec. 11, Ch. 3, L. 1985.

25-7-205. Persons drawn and approved to form jury. The first 12 persons, or such other number as will constitute the jury, who appear, as their names are drawn and called, and are approved as indifferent between the parties and not discharged or excused must be sworn and constitute the jury to try the issue.

History: En. Sec. 1052, C. Civ. Proc. 1895; re-en. Sec. 6733, Rev. C. 1907; re-en. Sec. 9336, R.C.M. 1921; re-en. Sec. 9336, R.C.M. 1935; R.C.M. 1947, 93-5003; amd. Sec. 93, Ch. 575, L. 1981.

Cross-References

Number of a trial jury, 3-15-106.

Alternate jurors, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).

Juries — verdict, Rule 48, M.R.Civ.P. (see Title 25, ch. 20).

25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors duly drawn and notified do not attend to form a jury, the judge or the jury commissioner, pursuant to an order of the court to be entered in the minutes, shall, in the presence of two witnesses, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified, the court may make or order further drawings until a sufficient number is obtained.

(2) Each person so notified must attend at the time required by the notice and, unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal to do so, he may be fined in the same manner as any other trial juror regularly drawn and notified. He is subject to the same exceptions and challenges as any other trial juror.

History: En. Sec. 1057, C. Civ. Proc. 1895; re-en. Sec. 6738, Rev. C. 1907; re-en. Sec. 9341, R.C.M. 1921; re-en. Sec. 9341, R.C.M. 1935; amd. Sec. 5, Ch. 151, L. 1937; amd. Sec. 5, Ch. 3, L. 1939; amd. Sec. 46, Ch. 344, L. 1977; R.C.M. 1947, 93-5008; amd. Sec. 15, Ch. 379, L. 1983; amd. Sec. 12, Ch. 3, L. 1985.

Cross-References

Failure of juror to attend as contempt, 3-1-501.

Record of attendance to be kept by clerk, 3-5-510.

Attachment and fine for failure to attend, 3-15-321.

Notice to jurors, 3-15-505.

25-7-207. Oath of jury. As soon as the jury is completed, an oath must be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between ...., the plaintiff, and ...., the defendant, and render a true verdict according to the evidence.

History: En. Sec. 132, p. 69, Bannack Stat.; re-en. Sec. 160, p. 164, L. 1867; re-en. Sec. 196, p. 66, Cod. Stat. 1871; re-en. Sec. 247, p. 100, L. 1877; re-en. Sec. 247, 1st Div. Rev. Stat. 1879; re-en. Sec. 256, 1st Div. Comp. Stat. 1887; amd. Sec. 1064, C. Civ. Proc. 1895; re-en. Sec. 6745, Rev. C. 1907; re-en. Sec. 9348, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 604; R.C.M. 1947, 93-5015.

Cross-References

Alternate juror to take oath, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).

25-7-208. Ballots of jurors who have been sworn. The ballots with the names of the jurors so sworn must be then deposited in another box and there kept apart from the other ballots with the names of jurors until that jury is discharged. After the jury is discharged, the ballots with the names of the jurors thereon must be returned to the box from which they were first taken.

History: **Ap. p. Sec. 1053, C. Civ. Proc. 1895; re-en. Sec. 6734, Rev. C. 1907; amd. Sec. 12, Ch. 35, L. 1919; re-en. Sec. 9337, R.C.M. 1921; re-en. Sec. 9337, R.C.M. 1935; Sec. 93-5004, R.C.M. 1947; Ap. p. Sec. 1054, C. Civ. Proc. 1895; re-en. Sec. 6735, Rev. C. 1907; amd. Sec. 13, Ch. 35, L. 1919; re-en. Sec. 9338, R.C.M. 1921; re-en. Sec. 9338, R.C.M. 1935; Sec. 93-5005, R.C.M. 1947; R.C.M. 1947, 93-5004, 93-5005(part); amd. Sec. 16, Ch. 379, L. 1983.**

Cross-References

Duty of clerk — jury box, 3-15-404.

25-7-209. Ballots of jurors not sworn. The ballot with the name of a juror who is absent when his name is drawn or called or is set aside or excused from serving on that trial must be again returned to the box containing the undrawn ballots as soon as the jury is sworn.

History: **En. Sec. 1055, C. Civ. Proc. 1895; re-en. Sec. 6736, Rev. C. 1907; amd. Sec. 14, Ch. 35, L. 1919; re-en. Sec. 9339, R.C.M. 1921; re-en. Sec. 9339, R.C.M. 1935; R.C.M. 1947, 93-5006; amd. Sec. 17, Ch. 379, L. 1983.**

Cross-References

Duty of clerk — jury box, 3-15-404.

25-7-210. Repealed. Sec. 195, Ch. 575, L. 1981.

History: **En. Sec. 1, Ch. 5, L. 1935; re-en. Sec. 8927.1, R.C.M. 1935; R.C.M. 1947, 93-1811.**

25-7-211 through 25-7-220 reserved.

25-7-221. Challenges to jurors and the jury. (1) Each party may challenge the jury or jurors as follows:

(a) the panel or array;

(b) for cause;

(c) peremptory.

(2) Challenges to individual jurors are for cause or peremptory.

History: **En. Sec. 133, p. 69, Bannack Stat.; re-en. Sec. 161, p. 164, L. 1867; amd. Sec. 197, p. 66, Cod. Stat. 1871; amd. Sec. 248, p. 100, L. 1877; amd. Sec. 248, 1st Div. Rev. Stat. 1879; re-en. Sec. 257, 1st Div. Comp. Stat. 1887; re-en. Sec. 1059, C. Civ. Proc. 1895; re-en. Sec. 6740, Rev. C. 1907; re-en. Sec. 9343, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 301; re-en. Sec. 9343, R.C.M. 1935; amd. Sec. 1, Ch. 300, L. 1971; R.C.M. 1947, 93-5010(part).**

Cross-References

Manner of selection and order of examination of jurors, Rule 47(b), M.R.Civ.P. (see Title 25, ch. 20).

Selecting a jury in criminal cases, Title 46, ch. 16, part 1.

25-7-222. Challenges to the array or panel. (1) A challenge to the array or panel may be made and the whole array or panel set aside by the court when the jury was not selected, drawn, summoned, or notified as prescribed by law. It is not a valid objection to a jury that it contains none of the jurors originally returned to the court or is only partially composed of such jurors.

(2) There can be only one challenge on a side to the array or panel, which may be made by one or more of the parties.

History: **Ap. p. Sec. 1058, C. Civ. Proc. 1895; re-en. Sec. 6739, Rev. C. 1907; re-en. Sec. 9342, R.C.M. 1921; re-en. Sec. 9342, R.C.M. 1935; Sec. 93-5009, R.C.M. 1947; Ap. p. Sec. 133, p. 69, Bannack Stat.; re-en. Sec. 161, p. 164, L. 1867; amd. Sec. 197, p. 66, Cod. Stat. 1871; amd. Sec. 248, p. 100, L. 1877; amd. Sec. 248, 1st Div. Rev. Stat. 1879; re-en. Sec. 257, 1st Div. Comp. Stat. 1887; re-en. Sec. 1059, C. Civ. Proc. 1895; re-en. Sec. 6740, Rev. C. 1907; re-en. Sec. 9343, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 301; re-en. Sec. 9343,**

R.C.M. 1935; amd. Sec. 1, Ch. 300, L. 1971; Sec. 93-5010, R.C.M. 1947; R.C.M. 1947, 93-5009, 93-5010(part).

Cross-References

Jury lists, Title 3, ch. 15, part 4.

Trial juries in District Court, Title 3, ch. 15, part 5.

25-7-223. Challenges to jurors for cause. Challenges for cause may be taken on one or more of the following grounds:

(1) a want of any of the qualifications prescribed by this code to render a person competent as a juror;

(2) being the spouse of or related to a party by consanguinity or affinity within the sixth degree;

(3) standing in the relation of guardian and ward, debtor and creditor, employer and employee, or principal and agent to either party or being a partner in business with either party or surety on any bond or obligation for either party. However, a challenge for cause may not be taken because of debtor and creditor relation when the same arises solely:

(a) by reason of current bills of gas, water, electricity, or telephone; or

(b) because a prospective juror is a depositor of funds with a bank, savings and loan institution, credit union, or similar financial institution.

(4) having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

(5) interest on the part of the juror in the event of the action or in the main question involved in the action, except his interest as a member or citizen of a municipal corporation;

(6) having an unqualified opinion or belief as to the merits of the action;

(7) the existence of a state of mind in the juror evincing enmity against or bias in favor of either party.

History: En. Sec. 134, p. 70, Bannack Stat.; re-en. Sec. 162, p. 164, L. 1867; re-en. Sec. 198, p. 66, Cod. Stat. 1871; re-en. Sec. 249, p. 100, L. 1877; re-en. Sec. 249, 1st Div. Rev. Stat. 1879; re-en. Sec. 258, 1st Div. Comp. Stat. 1887; amd. Sec. 1060, C. Civ. Proc. 1895; re-en. Sec. 6741, Rev. C. 1907; re-en. Sec. 9344, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 602; re-en. Sec. 9344, R.C.M. 1935; amd. Sec. 1, Ch. 10, L. 1953; R.C.M. 1947, 93-5011; amd. Sec. 94, Ch. 575, L. 1981; amd. Sec. 1, Ch. 106, L. 1983.

Cross-References

Relationship by affinity, 1-1-219.

Grounds for objection to appointment of referee same as for trial juror, 25-7-702.

Manner of selection and order of examination of jurors, Rule 47(b), M.R.Civ.P. (see Title 25, ch. 20).

Agency, Title 28, ch. 10.

Suretyships, Title 28, ch. 11, part 4.

Debtor and creditor relationships, Title 31, ch. 2.

Partnerships, Title 35, ch. 10.

Employment defined, 39-2-101.

Marriage, Title 40, ch. 1.

Guardianships, Title 72, ch. 5.

25-7-224. Peremptory challenges to jurors. (1) Each party is entitled to four peremptory challenges, except as provided for under subsection (2).

(2) When a six-person jury is authorized by law, each side shall have two peremptory challenges. When the parties agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in open court, with the approval of the court, upon the number of peremptory challenges to be allowed, not to exceed four.

(3) Peremptory challenges shall be taken as provided in Rule 47(b), M.R.Civ.P.

History: Ap.p. Sec. 133, p. 69, Bannack Stat.; re-en. Sec. 161, p. 164, L. 1867; amd. Sec. 197, p. 66, Cod. Stat. 1871; amd. Sec. 248, p. 100, L. 1877; amd. Sec. 248, 1st Div. Rev. Stat. 1879; re-en. Sec. 257, 1st Div. Comp. Stat. 1887; re-en. Sec. 1059, C. Civ. Proc. 1895; re-en. Sec. 6740, Rev. C. 1907; re-en. Sec. 9343, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 301; re-en. Sec. 9343, R.C.M. 1935; amd. Sec. 1, Ch. 300, L. 1971; Sec. 93-5010, R.C.M. 1947; Ap.p. Sec. 224, C. Civ. Proc. 1895; re-en. Sec. 6334, Rev. C. 1907; re-en. Sec. 8887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 194; re-en. Sec. 8887, R.C.M. 1935; amd. Sec. 4, Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971; Sec. 93-1205, R.C.M. 1947; R.C.M. 1947, 93-1205(part), 93-5010(part); amd. Sec. 95, Ch. 575, L. 1981.

Cross-References

Number of a trial jury, 3-15-106.

Part 3

Order and Conduct of Trial by Jury

Part Cross-References

Powers of judicial officers, Title 3, ch. 1, part 4.

Order of criminal trial, Title 46, ch. 16, part 4.

25-7-301. Order of trial. When the jury has been sworn, the trial shall proceed in the following order unless the court, for good cause and special reason, otherwise directs:

(1) The party who has the burden of proof may briefly state his case and the evidence by which he expects to sustain it.

(2) The adverse party may then, or at the opening of his case, briefly state his defense and the evidence he expects to offer in support of it.

(3) The party who has the burden of proof shall first produce his evidence; the adverse party will then produce his evidence.

(4) The parties will then be confined to rebutting evidence unless the court, for good reasons in furtherance of justice, permits them to offer evidence in their original case.

(5) When the instructions have been passed upon and settled by the court and before the arguments of counsel to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as are passed upon and settled at such settlement. In charging the jury, the court shall give to it all matters of law which the court thinks necessary for the jury's information in rendering a verdict.

(6) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the party upon whom rests the burden of proof must commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court must determine their relative order in the evidence and argument. Counsel, in arguing the case to the jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence in the case.

History: En. Sec. 1, Ch. 34, L. 1907; Sec. 6746, Rev. C. 1907; re-en. Sec. 9349, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 607, 608; re-en. Sec. 9349, R.C.M. 1935; amd. Sec. 84, Ch. 13, L. 1961; R.C.M. 1947, 93-5101; amd. Sec. 96, Ch. 575, L. 1981.

Cross-References

Evidence, Rule 43, M.R.Civ.P. (see Title 25, ch. 20).

Instructions to jury, Rule 51, M.R.Civ.P. (see Title 25, ch. 20).

Instructions to jury on how to evaluate evidence, 26-1-303.

Burdens of proof, Title 26, ch. 1, part 4.

Mode and order of interrogation and presentation, Rule 611, M.R.Ev. (see Title 26, ch. 10).

25-7-302. Directed verdict when no issues of fact. Where, upon the trial of an issue by a jury, the case presents only questions of law, the judge may direct the jury to render a verdict in favor of the party entitled thereto.

History: **En. Sec. 1104, C. Civ. Proc. Sec. 1895; re-en. Sec. 6761, Rev. C. 1907; re-en. Sec. 9364, R.C.M. 1921; re-en. Sec. 9364, R.C.M. 1935; R.C.M. 1947, 93-5205.**

Cross-References

Issues defined, 25-7-101.

Motion for directed verdict, Rule 50(a), M.R.Civ.P. (see Title 25, ch. 20).

25-7-303. Activity of court during jury's absence. While the jury is absent, the court may adjourn from time to time in respect to other business, but it is nevertheless open for every purpose connected with the case submitted to the jury until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court in case of an agreement during a recess or adjournment for the day.

History: **En. Sec. 142, p. 71, Bannack Stat.; re-en. Sec. 170, p. 166, L. 1867; re-en. Sec. 210, p. 68, Cod. Stat. 1871; re-en. Sec. 260, p. 103, L. 1877; re-en. Sec. 260, 1st Div. Rev. Stat. 1879; re-en. Sec. 269, 1st Div. Comp. Stat. 1887; amd. Sec. 1088, C. Civ. Proc. 1895; re-en. Sec. 6754, Rev. C. 1907; re-en. Sec. 9357, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 617; re-en. Sec. 9357, R.C.M. 1935; R.C.M. 1947, 93-5109.**

Cross-References

Nonjudicial day, 3-1-302.

25-7-304. Procedure when a juror becomes sick. If, after the impaneling of the jury and before verdict, a juror becomes sick so as to be unable to perform his duty, the court may order him to be discharged. In that case, subject to the provisions of Rule 47(c), M.R.Civ.P., the trial may proceed with the other jurors or another juror may be sworn and the trial may begin anew or the jury may be discharged and a new jury then or afterward impaneled.

History: **En. Sec. 136, p. 70, Bannack Stat.; amd. Sec. 164, p. 165, L. 1867; re-en. Sec. 205, p. 68, Cod. Stat. 1871; re-en. Sec. 255, p. 103, L. 1877; re-en. Sec. 255, 1st Div. Rev. Stat. 1879; re-en. Sec. 264, 1st Div. Comp. Stat. 1887; re-en. Sec. 1086, C. Civ. Proc. 1895; re-en. Sec. 6752, Rev. C. 1907; re-en. Sec. 9355, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 615; re-en. Sec. 9355, R.C.M. 1935; R.C.M. 1947, 93-5107; amd. Sec. 97, Ch. 575, L. 1981.**

Cross-References

Alternate juror, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).

25-7-305. Procedure when jury prevented from giving verdict. In all cases where the jury is discharged or prevented from giving a verdict by reason of accident or other cause during the progress of the trial or after the case is submitted to it, the action may be again tried immediately or at a future time, as the court may direct.

History: **En. Sec. 141, p. 71, Bannack Stat.; amd. Sec. 169, p. 166, L. 1867; re-en. Sec. 209, p. 68, Cod. Stat. 1871; re-en. Sec. 259, p. 104, L. 1877; re-en. Sec. 259, 1st Div. Rev. Stat. 1879; re-en. Sec. 268, 1st Div. Comp. Stat. 1887; re-en. Sec. 1087, C. Civ. Proc. 1895; re-en. Sec. 6753, Rev. C. 1907; re-en. Sec. 9356, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 616; re-en. Sec. 9356, R.C.M. 1935; R.C.M. 1947, 93-5108.**

Part 4
Conduct of Jury

Part Cross-References
New trial for jury misconduct, 25-11-102.
Conduct of jury in criminal proceedings, Title 46, ch. 16, part 5.

25-7-401. View by jury of the premises. When, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation or of the place at which any material fact occurred, it may order the jurors to be conducted in a body, under the charge of an officer and one person representing each party, to the place, which shall be shown to them by the persons appointed by the court for that purpose. While the jury is thus absent, no person other than the persons so appointed shall speak to it on any subject connected with the trial, and such persons shall not speak to the jury upon any matters connected with the subject of the action but may point out to the jury the property in litigation or the place at which any material fact occurred.

History: En. Sec. 204, p. 68, Cod. Stat. 1871; re-en. Sec. 254, p. 103, L. 1877; re-en. Sec. 254, 1st Div. Rev. Stat. 1879; re-en. Sec. 263, 1st Div. Comp. Stat. 1887; amd. Sec. 1081, C. Civ. Proc. 1895; re-en. Sec. 6747, Rev. C. 1907; re-en. Sec. 9350, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 610; re-en. Sec. 9350, R.C.M. 1935; R.C.M. 1947, 93-5102.

25-7-402. Admonition when jury permitted to separate. If the jurors are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any other person on any subject of the trial and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

History: En. Sec. 263, p. 104, L. 1877; re-en. Sec. 263, 1st Div. Rev. Stat. 1879; re-en. Sec. 272, 1st Div. Comp. Stat. 1887; re-en. Sec. 1082, C. Civ. Proc. 1895; re-en. Sec. 6748, Rev. C. 1907; re-en. Sec. 9351, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 611; re-en. Sec. 9351, R.C.M. 1935; R.C.M. 1947, 93-5103.

Cross-References
Alternate juror not to join in deliberations, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).
Offense by juror for receiving unauthorized communication, 45-7-102.

25-7-403. Conduct of jury after case submitted to it. When the case is finally submitted to the jury, it may decide in court or retire for deliberation. If the jurors retire, they must be kept together in some convenient place, under charge of an officer, until at least two-thirds of them agree upon a verdict or are discharged by the court. Unless by order of the court, the officer having them under his charge must not suffer any communication to be made to them or make any himself, except to ask them if they or two-thirds of them are agreed upon a verdict; and he must not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

History: En. Sec. 138, p. 71, Bannack Stat.; re-en. Sec. 166, p. 165, L. 1867; re-en. Sec. 206, p. 68, Cod. Stat. 1871; re-en. Sec. 256, p. 103, L. 1877; re-en. Sec. 256, 1st Div. Rev. Stat. 1879; re-en. Sec. 265, 1st Div. Comp. Stat. 1887; amd. Sec. 1084, C. Civ. Proc. 1895; re-en. Sec. 6750, Rev. C. 1907; re-en. Sec. 9353, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 613; re-en. Sec. 9353, R.C.M. 1935; R.C.M. 1947, 93-5105.

Cross-References
Number in trial jury, 3-15-106.
Alternate juror not to join in deliberations, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).

Bribery and corrupt influence, Title 45, ch. 7, part 1.

Official misconduct, Title 45, ch. 7, part 4.

25-7-404. Papers which may be taken into jury room. Upon retiring for deliberation, the jurors may take with them all papers which have been received as evidence in the cause except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them notes of the testimony or other proceedings on the trial taken by themselves or any of them but none taken by any other person.

History: En. Sec. 139, p. 71, Bannack Stat.; re-en. Sec. 167, p. 166, L. 1867; amd. Sec. 207, p. 68, Cod. Stat. 1871; re-en. Sec. 257, p. 103, L. 1877; re-en. Sec. 257, 1st Div. Rev. Stat. 1879; re-en. Sec. 266, 1st Div. Comp. Stat. 1887; amd. Sec. 1083, C. Civ. Proc. 1895; re-en. Sec. 6749, Rev. C. 1907; re-en. Sec. 9352, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 612; re-en. Sec. 9352, R.C.M. 1935; R.C.M. 1947, 93-5104.

25-7-405. Jury's request for further information. After the jury has retired for deliberation, if there be a disagreement among the jurors as to any part of the testimony or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of or after notice to the parties or counsel. Such information must be given in writing or taken down by the stenographer.

History: En. Sec. 140, p. 71, Bannack Stat.; amd. Sec. 168, p. 166, L. 1867; re-en. Sec. 208, p. 68, Cod. Stat. 1871; re-en. Sec. 258, p. 103, L. 1877; re-en. Sec. 258, 1st Div. Rev. Stat. 1879; re-en. Sec. 267, 1st Div. Comp. Stat. 1887; amd. Sec. 1085, C. Civ. Proc. 1895; re-en. Sec. 6751, Rev. C. 1907; re-en. Sec. 9354, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 614; re-en. Sec. 9354, R.C.M. 1935; R.C.M. 1947, 93-5106.

Part 5

Jury's Verdict

Part Cross-References

Receiving verdict and giving instructions on nonjudicial days, 3-1-302.

Jury prevented from giving verdict, 25-7-305.

Verdict vacated upon granting of new trial, 25-11-102.

Juries — verdict, Rule 48, M.R.Civ.P. (see Title 25, ch. 20).

Special verdicts and interrogatories, Rule 49, M.R.Civ.P. (see Title 25, ch. 20).

Motion for directed verdict and judgment notwithstanding the verdict, Rule 50, M.R.Civ.P. (see Title 25, ch. 20).

Verdict in criminal proceedings, Title 46, ch. 16, part 6.

25-7-501. Return of verdict — polling the jury. (1) When the jurors or two-thirds of them have agreed upon a verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman. The verdict must be in writing and signed by the foreman and must be read by the clerk to the jury, and the inquiry made whether it is their verdict.

(2) Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict. If upon such inquiry or polling more than one-third of the jurors disagree thereto, the jury must be sent out again, but if no such disagreement be expressed, the verdict is complete and the jury discharged from the case.

History: En. Sec. 143, p. 72, Bannack Stat.; re-en. Sec. 171, p. 166, L. 1867; re-en. Sec. 211, p. 69, Cod. Stat. 1871; amd. Sec. 261, p. 104, L. 1877; re-en. Sec. 261, 1st Div. Rev.

Stat. 1879; re-en. Sec. 270, 1st Div. Comp. Stat. 1887; amd. Sec. 1089, C. Civ. Proc. 1895; re-en. Sec. 6755, Rev. C. 1907; re-en. Sec. 9358, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 618; re-en. Sec. 9358, R.C.M. 1935; R.C.M. 1947, 93-5110.

Cross-References

Number of a trial jury, 3-15-106.

25-7-502. Content of verdict — action or counterclaim for recovery of money. When a verdict is found for the plaintiff in an action for the recovery of money or for the defendant when a counterclaim for the recovery of money is established exceeding the amount of the plaintiff's claim as established, the jury must also find the amount of the recovery.

History: En. Sec. 149, p. 73, Bannack Stat.; re-en. Sec. 176, p. 167, L. 1867; re-en. Sec. 216, p. 70, Cod. Stat. 1871; re-en. Sec. 266, p. 105, L. 1877; re-en. Sec. 266, 1st Div. Rev. Stat. 1879; re-en. Sec. 276, 1st Div. Comp. Stat. 1887; amd. Sec. 1102, C. Civ. Proc. 1895; re-en. Sec. 6759, Rev. C. 1907; re-en. Sec. 9362, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 626; re-en. Sec. 9362, R.C.M. 1935; R.C.M. 1947, 93-5203.

Cross-References

Counterclaim and cross-claim, Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

25-7-503. Content of verdict — action for recovery of personal property. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff or the defendant, by his answer, claim a return thereof, the jury, if its verdict be in favor of the plaintiff or if, being in favor of the defendant, it also finds that he is entitled to a return thereof, shall find the value of the property (but failure to find all the facts mentioned in this section shall not invalidate the verdict) and may at the same time assess the damages, if they are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

History: En. Sec. 150, p. 73, Bannack Stat.; re-en. Sec. 177, p. 167, L. 1867; re-en. Sec. 217, p. 70, Cod. Stat. 1871; re-en. Sec. 267, p. 105, L. 1877; re-en. Sec. 267, 1st Div. Rev. Stat. 1879; re-en. Sec. 277, 1st Div. Comp. Stat. 1887; re-en. Sec. 1103, C. Civ. Proc. 1895; re-en. Sec. 6760, Rev. C. 1907; re-en. Sec. 9363, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 627; re-en. Sec. 9363, R.C.M. 1935; R.C.M. 1947, 93-5204.

Cross-References

Claim and delivery, Title 27, ch. 17.

Part 6

Trial by the Court

Part Cross-References

Issues defined, types of issues, 25-7-101.

Findings by the court, Rule 52, M.R.Civ.P. (see Title 25, ch. 20).

Province of court and jury, Title 26, ch. 1, part 2.

Judicial notice of facts, Rule 201, M.R.Ev. (see Title 26, ch. 10).

25-7-601. Waiver of findings of fact. The findings of fact may be waived by the several parties to an issue of fact by:

(1) failing to appear at the trial;

(2) consent in writing filed with the clerk;

(3) oral consent in open court entered in the minutes.

History: En. Sec. 1113, C. Civ. Proc. 1895; re-en. Sec. 6765, Rev. C. 1907; re-en. Sec. 9368, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 634; re-en. Sec. 9368, R.C.M. 1935; R.C.M. 1947, 93-5304.

Cross-References

Findings by the court, Rule 52, M.R.Civ.P. (see Title 25, ch. 20).

Default, Rule 55, M.R.Civ.P. (see Title 25, ch. 20).

25-7-602. Trial upon agreed statement of facts. When any cause is tried and submitted upon a written statement of facts agreed to by the parties or their attorneys, such statement shall have the effect of a special verdict or finding of facts and judgment shall be pronounced thereon as upon a special verdict or finding of facts. In such case, no finding of facts shall be made unless such statement shall fail to embrace all the facts proved and in issue, in which case any additional fact may be found upon evidence which is not repugnant to the agreed statement.

History: En. Sec. 1117, C. Civ. Proc. 1895; re-en. Sec. 6769, Rev. C. 1907; re-en. Sec. 9372, R.C.M. 1921; re-en. Sec. 9372, R.C.M. 1935; R.C.M. 1947, 93-5308.

Cross-References

Special verdicts, Rule 49, M.R.Civ.P. (see Title 25, ch. 20).

Judgments — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

Submission of controversy without action, Title 27, ch. 7.

Declaratory judgments, Title 27, ch. 8.

Part 7
Referees

Part Cross-References

Contempt before referee, 3-1-512.

Fees of referee as allowable costs, 25-10-201.

Costs of postponement allowed, 25-10-203.

Masters as referees, powers, proceedings, report, Rule 53, M.R.Civ.P. (see Title 25, ch. 20).

Person holding property to appear before referee, 27-18-503.

Instructions from referee upon dishonor, 30-4-503.

Paternity hearing before referee, 40-6-111.

25-7-701. Oath of referee. Every referee, before acting as such, shall take and subscribe an oath or affirmation before some authorized officer, which shall be filed with the clerk of the court by which he is appointed, that he will honestly, impartially, and faithfully perform the duties of referee in the action or matter referred to him, as required by law, to the best of his knowledge and ability.

History: En. Sec. 224, p. 72, Cod. Stat. 1871; re-en. Sec. 275, p. 108, L. 1877; re-en. Sec. 275, 1st Div. Rev. Stat. 1879; re-en. Sec. 285, 1st Div. Comp. Stat. 1887; re-en. Sec. 1133, C. Civ. Proc. 1895; re-en. Sec. 6774, Rev. C. 1907; re-en. Sec. 9377, R.C.M. 1921; re-en. Sec. 9377, R.C.M. 1935; R.C.M. 1947, 93-5404.

Cross-References

Officers who may administer oaths, 1-6-101.

Appointment of referees, Rule 53(a), M.R.Civ.P. (see Title 25, ch. 20).

25-7-702. Grounds for objection to appointment of referee. Either party may object to the appointment of any person as referee on the same grounds that he might object to him as a trial juror, as provided in 25-7-223.

History: En. Sec. 185, p. 169, L. 1867; re-en. Sec. 225, p. 72, Cod. Stat. 1871; re-en. Sec. 276, p. 109, L. 1877; re-en. Sec. 276, 1st Div. Rev. Stat. 1879; re-en. Sec. 286, 1st Div. Comp. Stat. 1887; en. Sec. 1137, C. Civ. Proc. 1895; re-en. Sec. 6778, Rev. C. 1907; re-en. Sec. 9381, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 641; re-en. Sec. 9381, R.C.M. 1935; R.C.M. 1947, 93-5408.

Cross-References

Appointment of referee, Rule 53(a), M.R.Civ.P. (see Title 25, ch. 20).

25-7-703. Procedure upon objection. The objections taken to the appointment of any person as referee must be heard and disposed of by the court. Affidavits may be read and witnesses examined as to such objections.

History: En. Sec. 186, p. 170, L. 1867; re-en. Sec. 226, p. 73, Cod. Stat. 1871; re-en. Sec. 277, p. 109, L. 1877; re-en. Sec. 277, 1st Div. Rev. Stat. 1879; re-en. Sec. 287, 1st Div. Comp. Stat. 1887; re-en. Sec. 1138, C. Civ. Proc. 1895; re-en. Sec. 6779, Rev. C. 1907; re-en. Sec. 9382, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 642; re-en. Sec. 9382, R.C.M. 1935; R.C.M. 1947, 93-5409.

CHAPTER 8

DEPOSIT IN COURT — DELIVERY TO PARTY

Part 1 — General Provisions

25-8-101. When court may order deposit or delivery.
25-8-102. Enforcement of court's order.
25-8-103. With whom money deposited.
25-8-104. Safekeeping of deposit by county treasurer.

Chapter Cross-References

Costs when money deposited with court, 25-10-107.

Interpleader by substitution with deposit, Rule 22(b), M.R.Civ.P. (see Title 25, ch. 20).

Deposits in court, Rule 67, M.R.Civ.P. (see Title 25, ch. 20).

Appeal from order, Rule 1, M.R.App.P. (see Title 25, ch. 21).

Part 1

General Provisions

25-8-101. When court may order deposit or delivery. When it is admitted by the pleading or shown upon the examination of a party that he has in his possession or under his control any money or other thing capable of delivery which, being the subject of the litigation, is held by him as trustee for another party or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party upon such conditions as may be just, subject to the further direction of the court.

History: En. Sec. 115, p. 66, Bannack Stat.; re-en. Sec. 142, p. 160, L. 1867; re-en. Sec. 178, p. 61, Cod. Stat. 1871; re-en. Sec. 227, p. 95, L. 1877; re-en. Sec. 227, 1st Div. Rev. Stat. 1879; re-en. Sec. 235, 1st Div. Comp. Stat. 1887; amd. Sec. 970, C. Civ. Proc. 1895; re-en. Sec. 6705, Rev. C. 1907; re-en. Sec. 9308, R.C.M. 1921; Cal. C. Civ. Proc. 572; re-en. Sec. 9308, R.C.M. 1935; R.C.M. 1947, 93-4501.

25-8-102. Enforcement of court's order. Where the court directs a deposit or delivery of money or where a judgment directs a party to make a deposit or delivery or to convey real property, if the direction is disobeyed, the court, besides punishing the disobedience as a contempt, may by order require the sheriff to take and deposit or deliver the money or other personal property or to convey the real property in conformity with the direction of the court.

History: En. Sec. 229, p. 95, L. 1877; re-en. Sec. 229, 1st Div. Rev. Stat. 1879; re-en. Sec. 237, 1st Div. Comp. Stat. 1887; amd. Sec. 972, C. Civ. Proc. 1895; re-en. Sec. 6707, Rev. C. 1907; re-en. Sec. 9310, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 574; re-en. Sec. 9310, R.C.M. 1935; R.C.M. 1947, 93-4504.

Cross-References

Judgment requiring the performance of specific acts, 25-13-203.

25-8-103. With whom money deposited. (1) Whenever moneys are paid into or deposited in court, the same shall be delivered to the clerk in person or to such of his deputies as shall be specially authorized by his appointment in writing to receive the same. He must, unless otherwise directed by law, deposit it with the county treasurer to be held by him subject to the order of the court.

(2) Such appointment shall be filed with the county treasurer, who shall exhibit it and give to each person applying for the same a certified copy of the same. It shall be in force until a revocation in writing is filed with the county treasurer, who shall thereupon write "revoked" in ink across the face of the appointment.

History: En. Sec. 3443, C. Civ. Proc. 1895; re-en. Sec. 8057, Rev. C. 1907; re-en. Sec. 10701, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2104; re-en. Sec. 10701, R.C.M. 1935; R.C.M. 1947, 93-4503(part).

Cross-References

Duties of County Treasurer, 7-6-2111.

25-8-104. Safekeeping of deposit by county treasurer. The treasurer shall keep each fund distinct and open an account with each. For the safekeeping of the money deposited with the treasurer, his official bond shall be security.

History: Ap. p. Sec. 3443, C. Civ. Proc. 1895; re-en. Sec. 8057, Rev. C. 1907; re-en. Sec. 10701, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2104; re-en. Sec. 10701, R.C.M. 1935; Sec. 93-4503, R.C.M. 1947; Ap. p. Sec. 228, p. 95, L. 1877; re-en. Sec. 228, 1st. Div. Rev. Stat. 1879; re-en. Sec. 236, 1st Div. Comp. Stat. 1887; amd. Sec. 971, C. Civ. Proc. 1895; re-en. Sec. 6706, Rev. C. 1907; re-en. Sec. 9309, R.C.M.1921; Cal. C. Civ. Proc. Sec. 573; re-en. Sec. 9309, R.C.M. 1935; Sec. 93-4502, R.C.M. 1947; R.C.M. 1947, 93-4502(part), 93-4503(part).

Cross-References

Official bonds, Title 2, ch. 9, part 5.

Duties of County Treasurer, 7-6-2111.

CHAPTER 9

JUDGMENT

Part 1 — General Provisions

25-9-101. Judgment to be on the merits.
25-9-102. Judgment for or against married person.
25-9-103. Death of party after verdict, no lien.
25-9-104. Procedure after judgment on an issue of law.
25-9-105. Validation of defective judgments affecting realty.

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25-9-303. Filing of transcript of docket of federal court — lien — expiration.
25-9-304 through 25-9-310 reserved.
25-9-311. Entry of satisfaction of judgment in docket.

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25-9-402. Findings by trier of fact — civil actions.
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25-9-702. Definitions.
25-9-703. Scope.
25-9-704. Variation by agreement.
25-9-705. Determining money of claim.
25-9-706. Determining amount of money of certain contract claims.
25-9-707. Asserting and defending foreign-money claim.
25-9-708. Judgments and awards on foreign-money claims — times of money conversion — form of judgment.
25-9-709. Conversions of foreign money in distribution proceeding.
25-9-710. Prejudgment and judgment interest.
25-9-711. Enforcement of foreign judgments.
25-9-712. Determining United States dollar value of foreign-money claims for limited purposes.
25-9-713. Effect of currency revalorization.
25-9-714. Supplementary general principles of law.
25-9-715. Uniformity of application and construction.

Chapter Cross-References

Power of court to compel obedience, 3-1-111.

Disobedience as contempt, 3-1-501.

Judgments of contempt conclusive, 3-1-523.

Territorial extent, 3-5-312.

Judgment book, 3-5-507.

Judgments — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

Default judgment, Rule 55, M.R.Civ.P. (see Title 25, ch. 20).

Summary judgment, Rule 56, M.R.Civ.P. (see Title 25, ch. 20).

Declaratory judgments, Rule 57, M.R.Civ.P. (see Title 25, ch. 20).

Power of court to amend judgment on motion for new trial, Rule 59(a), M.R.Civ.P. (see Title 25, ch. 20).

Motion to alter or amend judgment, Rule 59(g), M.R.Civ.P. (see Title 25, ch. 20).

Relief from judgment or order, Rule 60, M.R.Civ.P. (see Title 25, ch. 20).

Amending judgment not required for harmless error, Rule 61, M.R.Civ.P. (see Title 25, ch. 20).

Stay of proceedings to enforce a judgment, Rule 62, M.R.Civ.P. (see Title 25, ch. 20).

Offer of judgment, Rule 68, M.R.Civ.P. (see Title 25, ch. 20).

Judgment for specific acts — vesting title, Rule 70, M.R.Civ.P. (see Title 25, ch. 20).

Appeal of judgments, Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

Part 1

General Provisions

25-9-101. Judgment to be on the merits. In every case, judgment must be rendered on the merits, except as provided in Rule 41, M.R.Civ.P.

History: En. Sec. 122, p. 68, Bannack Stat.; re-en. Sec. 149, p. 162, L. 1867; re-en. Sec. 185, p. 63, Cod. Stat. 1871; re-en. Sec. 235, p. 96, L. 1877; re-en. Sec. 235, 1st Div. Rev. Stat. 1879; re-en. Sec. 243, 1st Div. Comp. Stat. 1887; re-en. Sec. 1005, C. Civ. Proc. 1895; re-en. Sec. 6715, Rev. C. 1907; re-en. Sec. 9318, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 582; re-en. Sec. 9318, R.C.M. 1935; R.C.M. 1947, 93-4706.

25-9-102. Judgment for or against married person. Judgment for or against a married person may be rendered and enforced as if such person were single.

History: En. Sec. 1006, C. Civ. Proc. 1895; re-en. Sec. 6716, Rev. C. 1907; re-en. Sec. 9319, R.C.M. 1921; re-en. Sec. 9319, R.C.M. 1935; amd. Sec. 54, Ch. 535, L. 1975; R.C.M. 1947, 93-4707.

Cross-References

Capacity of married person to be a party, 25-5-201.

Joint interests, obligations, and powers of husband and wife, Title 40, ch. 2, part 1.

25-9-103. Death of party after verdict, no lien. If a party die after a verdict or decision upon any issue of fact and before judgment, the court may nevertheless render judgment thereon. Such a judgment is not a lien on the real property of the deceased party but is payable in the course of administration on his estate.

History: En. Sec. 178, p. 78, Bannack Stat.; amd. Sec. 202, p. 174, L. 1867; re-en. Sec. 242, p. 77, Cod. Stat. 1871; re-en. Sec. 293, p. 116, L. 1877; re-en. Sec. 293, 1st Div. Rev. Stat. 1879; re-en. Sec. 305, 1st Div. Comp. Stat. 1887; re-en. Sec. 1195, C. Civ. Proc. 1895; re-en. Sec. 6805, Rev. C. 1907; re-en. Sec. 9408, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 669; re-en. Sec. 9408, R.C.M. 1935; R.C.M. 1947, 93-5706.

Cross-References

Substitution of parties by death, Rule 25(a), M.R.Civ.P. (see Title 25, ch. 20).

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Estates and probate proceedings, Title 72.

25-9-104. Procedure after judgment on an issue of law. On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by Rule 55(a) and (b), M.R.Civ.P., upon the failure of the defendant to answer. If judgment be for the defendant upon an issue of law and the taking of an account or the proof of any fact be necessary to enable the court to complete the judgment, a reference may be ordered, as provided in Rule 55(b).

History: En. Sec. 272, p. 107, L. 1877; re-en. Sec. 272, 1st Div. Rev. Stat. 1879; re-en. Sec. 282, 1st Div. Comp. Stat. 1887; re-en. Sec. 1118, C. Civ. Proc. 1895; re-en. Sec. 6770, Rev. C. 1907; re-en. Sec. 9373, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 636; re-en. Sec. 9373, R.C.M. 1935; R.C.M. 1947, 93-5309.

Cross-References

Referees, Title 25, ch. 7, part 7.

Masters, Rule 53, M.R.Civ.P. (see Title 25, ch. 20).

25-9-105. Validation of defective judgments affecting realty. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1973, copied into the proper book kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to July 1, 1973, recorded in the proper book kept in the office of the county clerk and recorder shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality, or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired; and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality, or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree or of the record thereof may be read in evidence with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 146, L. 1973; R.C.M. 1947, 93-5710.5.

Cross-References

Admission of duplicates, copies of certain entries, Rule 1003, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

Recording real property transfers, Title 70, ch. 21.

Part 2
Contents of Judgment

Part Cross-References

What considered adjudged in a judgment, 26-3-102.

25-9-201. Whose rights determined in judgment. Subject to the provisions of Rule 54(b), M.R.Civ.P., judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants, and it may, when the justice of the case requires, determine the ultimate rights of the parties on each side as between themselves.

History: En. Sec. 118, p. 67, Bannack Stat.; re-en. Sec. 145, p. 161, L. 1867; re-en. Sec. 181, p. 62, Cod. Stat. 1871; re-en. Sec. 231, p. 95, L. 1877; re-en. Sec. 231, 1st. Div. Rev. Stat. 1879; re-en. Sec. 239, 1st Div. Comp. Stat. 1887; re-en. Sec. 1001, C. Civ. Proc. 1895; re-en. Sec. 6711, Rev. C. 1907; re-en. Sec. 9314, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 578; re-en. Sec. 9314, R.C.M. 1935; R.C.M. 1947, 93-4702(part); amd. Sec. 98, Ch. 575, L. 1981.

Cross-References

Interpleader, Rule 22, M.R.Civ.P. (see Title 25, ch. 20).

25-9-202. Designation in judgment of principal debtors and sureties. Upon the rendition of any judgment, if it shall be shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors and others of the said defendants are sureties of such principal debtor, the court may order the judgment so to state.

History: En. Sec. 118, p. 67, Bannack Stat.; re-en. Sec. 145, p. 161, L. 1867; re-en. Sec. 181, p. 62, Cod. Stat. 1871; re-en. Sec. 231, p. 95, L. 1877; re-en. Sec. 231, 1st. Div. Rev. Stat. 1879; re-en. Sec. 239, 1st Div. Comp. Stat. 1887; re-en. Sec. 1001, C. Civ. Proc. 1895; re-en. Sec. 6711, Rev. C. 1907; re-en. Sec. 9314, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 578; re-en. Sec. 9314, R.C.M. 1935; R.C.M. 1947, 93-4702(part).

Cross-References

Principal bound when surety bound, 26-3-104.

Suretyship, Title 28, ch. 11, part 4.

25-9-203. How amount expressed. In judgments, the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions of a cent.

History: En. Sec. 3152, Pol. C. 1895; re-en. Sec. 2035, Rev. C. 1907; re-en. Sec. 4285, R.C.M. 1921; Cal. Pol. C. Sec. 3274; re-en. Sec. 4285, R.C.M. 1935; R.C.M. 1947, 93-4710(part).

Cross-References

Money of account, Title 30, ch. 12, part 6.

25-9-204. Clerk to include interest in judgment. The clerk must include in the judgment entered up by him any interest on the verdict or decision of the court, from the time it was rendered or made.

History: En. Sec. 482, p. 230, L. 1867; re-en. Sec. 558, p. 149, Cod. Stat. 1871; re-en. Sec. 500, p. 172, L. 1877; re-en. Sec. 500, 1st Div. Rev. Stat. 1879; re-en. Sec. 513, 1st Div. Comp. Stat. 1887; re-en. Sec. 1870, C. Civ. Proc. 1895; re-en. Sec. 7173, Rev. C. 1907; re-en. Sec. 9806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1035; re-en. Sec. 9806, R.C.M. 1935; R.C.M. 1947, 93-8622(part).

Cross-References

Execution to include interest, 25-13-304.

Execution sale invalidated, 25-13-713.

Limitation on judgment against joint debtor, 25-15-106.

Interest on judgments, Rule 31, M.R.App.P. (see Title 25, ch. 21).

Interest on torts, 27-1-210.

Judgment when debt not yet due, 27-18-901.

25-9-205. Amount of interest. (1) Except as provided in subsection (2), interest is payable on judgments recovered in the courts of this state at the rate of 10% per annum and no greater rate. Such interest must not be compounded in any manner or form.

(2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that specifies an interest rate must be paid at the rate specified in the contractual obligation.

History: En. Sec. 2588, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5214, Rev. C. 1907; re-en. Sec. 7729, R.C.M. 1921; Cal. Civ. C. Sec. 1920; amd. Sec. 1, Ch. 143, L. 1933; re-en. Sec. 7729, R.C.M. 1935; R.C.M. 1947, 47-128; amd. Sec. 1, Ch. 373, L. 1979; amd. Sec. 1, Ch. 649, L. 1979; Sec. 31-1-110, MCA 1979; redes. 25-9-205 by Code Commissioner, 1979.

Cross-References

Execution of property against judgment debtor to include interest, 25-13-304.

Interest on torts, 27-1-210.

Validity of interest rate set by contract, 27-1-213.

Interest rates on loans of money, Title 31, ch. 1, part 1.

Interest at 18% on restitution of wrongfully received unemployment benefits, 39-51-3202.

Part 3

Entry of Judgment and Satisfaction — Lien

Part Cross-References

"Judgment book" defined, 3-5-507.

Docket, 3-5-508.

Docket to be available for inspection, 3-5-509.

Execution of lien upon real property, 25-13-305.

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

25-9-301. Docketing of judgment — lien — expiration. (1) Immediately after the entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment under appropriate heads in the docket kept by the clerk.

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned by the judgment debtor at the time or which the judgment debtor may afterward acquire until the lien ceases. Except as provided in subsection (3), the lien continues for 6 years unless the judgment is previously satisfied.

(3) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation unless the judgment is previously satisfied.

History: En. Sec. 180, p. 78, Bannack Stat.; en. Sec. 204, p. 174, L. 1867; re-en. Sec. 244, p. 77, Cod. Stat. 1871; amd. Sec. 1, p. 40, L. 1876; re-en. Sec. 295, p. 116, L. 1877; re-en. Sec. 295, 1st Div. Rev. Stat. 1879; re-en. Sec. 307, 1st Div. Comp. Stat. 1887; re-en. Sec. 1197, C. Civ. Proc. 1895; re-en. Sec. 6807, Rev. C. 1907; re-en. Sec. 9410, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 671; re-en. Sec. 9410, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, December 10, 1965, eff. January 1, 1966; R.C.M. 1947, 93-5708; amd. Sec. 1, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 at beginning of second sentence of (2) inserted exception clause; inserted (3) continuing lien for 10 years after termination of the support obligation; and made minor changes in style.

Cross-References

Liens, Title 71, ch. 3.

25-9-302. Filing of transcript of docket in another county — lien — expiration. (1) A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county; and from the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in that county, owned by the judgment debtor at the time or which the judgment debtor may afterward and before the lien expires acquire. Except as provided in subsection (2), the lien continues for 6 years unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation unless the judgment is previously satisfied.

History: En. Sec. 181, p. 78, Bannack Stat.; re-en. Sec. 207, p. 175, L. 1867; re-en. Sec. 247, p. 78, L. 1871; en. Sec. 1, p. 40, L. 1876; re-en. Sec. 298, p. 117, L. 1877; re-en. Sec. 298, 1st Div. Rev. Stat. 1879; re-en. Sec. 310, 1st Div. Comp. Stat. 1887; amd. Sec. 1200, C. Civ. Proc. 1895; re-en. Sec. 6810, Rev. C. 1907; re-en. Sec. 9413, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 674; re-en. Sec. 9413, R.C.M. 1935; R.C.M. 1947, 93-5712; amd. Sec. 2, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 at beginning of second sentence of (1) inserted exception clause; inserted (2) continuing lien for 10 years after termination of the support obligation; and made minor changes in style.

25-9-303. Filing of transcript of docket of federal court — lien — expiration. (1) A transcript of the original docket of any judgment rendered in the circuit or district court of the United States, ninth circuit, district of Montana, certified by the clerk of court, may be filed with the district court clerk of any county; and from the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in the county, owned by the judgment debtor at the time or which the judgment debtor may afterward and before the lien expires acquire. Except as provided in subsection (2), the lien continues for 6 years unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation unless the judgment is previously satisfied.

History: **En. Sec. 1, Ch. 14, L. 1907; re-en. Sec. 6812, Rev. C. 1907; re-en. Sec. 9415, R.C.M. 1921; re-en. Sec. 9415, R.C.M. 1935; R.C.M. 1947, 93-5714; amd. Sec. 3, Ch. 631, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 631 at beginning of second sentence of (1) inserted exception clause; inserted (2) continuing lien for 10 years after termination of the support obligation; and made minor changes in style.

25-9-304 through 25-9-310 reserved.

25-9-311. Entry of satisfaction of judgment in docket. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property by the judgment creditor or by his endorsement on the face or on the margin of the record of the judgment or by his attorney unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact otherwise than upon an execution, the party or attorney must give such acknowledgment or make such endorsement, and upon motion, the court may compel it or may order the entry of satisfaction to be made without it.

History: **En. Sec. 182, p. 79, Bannack Stat.; amd. Sec. 208, p. 175, L. 1867; re-en. Sec. 248, p. 78, L. 1871; en. Sec. 299, p. 117, L. 1877; re-en. Sec. 299, 1st Div. Rev. Stat. 1879; re-en. Sec. 311, 1st Div. Comp. Stat. 1887; re-en. Sec. 1201, C. Civ. Proc. 1895; re-en. Sec. 6811, Rev. C. 1907; re-en. Sec. 9414, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 675; re-en. Sec. 9414, R.C.M. 1935; R.C.M. 1947, 93-5713.**

Cross-References

Execution of judgment, Title 25, ch. 13.

Part 4

Periodic Payment of Certain Future Damages

Part Cross-References

Damages, Title 27, ch. 1, part 2.

25-9-401. Definitions. In this part:

(1) "future damages" includes damages for future medical treatment, care, or custody, loss of future earnings, and future pain and suffering of the judgment creditor; and

(2) "periodic payment" means the payment of money to the judgment creditor at regular intervals.

History: En. Sec. 1, Ch. 634, L. 1987.

Cross-References

Right to future damages, 27-1-203.

25-9-402. Findings by trier of fact — civil actions. In any action for personal injury, property damage, or wrongful death where liability is found after trial and in which $100,000 or more in future damages is awarded to the claimant, the trier of fact shall make a separate finding as to the amount of any future damages so awarded and state whether the amount of future damages has been reduced to present value.

History: En. Sec. 2, Ch. 634, L. 1987.

Cross-References

Findings by the court, Rule 52, M.R.Civ.P. (see Title 25, ch. 20).

25-9-403. Request for periodic payment of future damages. (1) A party to an action for personal injury, property damage, or wrongful death in which $100,000 or more of future damages is awarded may, prior to the entry of judgment, request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic payments rather than by a lump-sum payment. Upon such request, the court may enter an order for periodic payment of future damages if the court finds that such payment is in the best interests of the claimant. The total dollar amount of the ordered periodic payments must equal the total dollar amount of the future damages without a reduction to present value.

(2) A court ordering the payment of future damages by periodic payments shall make specific findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for future damages and as to whether an order for periodic payment of future damages is in the best interests of the claimant.

(3) The judgment order must specify the recipient or recipients of periodic payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made.

(4) A court ordering periodic payment of future damages shall order that the payments be made, during the life of the judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor, through the purchase of an inflation-indexed annuity approved by the court. The annuity must be in the form of an inflation-indexed annuity contract purchased from a qualified insurer that, in the most recent edition of A.M. Best, has an "A" (excellent) or higher rating and is in a class 7 or higher classification. The annuity also serves as any required supersedeas bond. Upon purchase of a court-approved annuity, the court may order that the judgment is satisfied and that the judgment debtor is discharged. If the

judgment creditor dies before all periodic payments have been made, the remaining payments become the property of his estate.

History: En. Sec. 3, Ch. 634, L. 1987.

Cross-References

Supersedeas bond, Title 25, ch. 20, M.R.Civ.P., Appendix, Form 23.

Attorney fees, Title 25, ch. 10, part 3.

25-9-404. Payment of attorney fees. A judgment must order payment of attorney fees and litigation expenses separately from an order for periodic payments of future damages. The attorney fees and expenses must be paid either in a lump sum or by periodic payments pursuant to an agreement entered into between the claimant and his attorney. An agreement for the immediate lump-sum payment of that portion of the attorney fees incurred to recover future damages to be paid by periodic payments must be calculated on the basis of the present value of the future damages.

History: En. Sec. 4, Ch. 634, L. 1987.

25-9-405. Assignment of periodic installments. An assignment of or an agreement to assign any right to periodic installments for future damages contained in a judgment entered under this part is enforceable only as to amounts:

(1) to secure payment of alimony, maintenance, or child support; or

(2) for the costs of products, services, or accommodations provided or to be provided by the assignee for medical or other health care.

History: En. Sec. 6, Ch. 634, L. 1987.

25-9-406. Failure to pay — penalty. If the court finds that the insurer that sold the annuity to the judgment debtor has unjustifiably exhibited a continuing pattern of failing to make periodic payments, the court shall find the insurer in contempt of court and order the insurer to pay past-due payments and the judgment creditor's damages caused by the failure to make payments, including court costs and attorney fees.

History: En. Sec. 5, Ch. 634, L. 1987.

Part 5

Uniform Enforcement of Foreign Judgments

Part Cross-References

Judgment, Rule 9(e), M.R.Civ.P. (see Title 25, ch. 20).

Effect of specific kinds of judicial records, Title 26, ch. 3, part 2.

Actions upon judgments, 27-2-201.

25-9-501. Short title. This part may be cited as the "Uniform Enforcement of Foreign Judgments Act".

History: En. Sec. 1, Ch. 66, L. 1989.

25-9-502. Definition. In this part, "foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

History: En. Sec. 2, Ch. 66, L. 1989.

25-9-503. Filing and status of foreign judgments. A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of a district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

History: En. Sec. 3, Ch. 66, L. 1989.

25-9-504. Notice of filing. (1) At the time of the filing of the foreign judgment, the judgment creditor or his attorney shall file with the clerk of the court an affidavit setting forth the name and last-known post-office address of the judgment debtor and the judgment creditor. The affidavit must also include a statement that the foreign judgment is valid and enforceable, and the extent to which it has been satisfied.

(2) Promptly upon filing the foreign judgment and affidavit, the judgment creditor or someone on his behalf shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to his attorney of record, if any, each at his last-known address, by certified mail, return receipt requested. The notice must include the name and post-office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. The judgment creditor shall file with the clerk of the court an affidavit setting forth the date upon which the notice was mailed.

(3) The proceeds of an execution may not be distributed to the judgment creditor earlier than 30 days after the date of mailing the notice of filing.

History: En. Sec. 4, Ch. 66, L. 1989.

25-9-505. Stay. (1) If the judgment debtor shows a district court that an appeal from the foreign judgment is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the district court any ground upon which enforcement of a judgment of any district court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of a judgment that is required in this state.

History: En. Sec. 5, Ch. 66, L. 1989.

25-9-506. Fees. Any person filing a foreign judgment shall pay to the clerk of court a fee of $60. Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court.

History: En. Sec. 6, Ch. 66, L. 1989.

25-9-507. Optional procedure. The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this part remains unimpaired.

History: En. Sec. 7, Ch. 66, L. 1989.

25-9-508. Uniformity of interpretation. This part must be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 8, Ch. 66, L. 1989.

Part 6

Uniform Foreign Money-Judgments Recognition Act

25-9-601. Short title. This part may be cited as the "Uniform Foreign Money-Judgments Recognition Act".

History: En. Sec. 1, Ch. 441, L. 1993.

25-9-602. Definitions. As used in this part, the following definitions apply:

(1) "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

(2) "Foreign state" means any governmental unit other than the United States or any state, district, commonwealth, territory, or insular possession thereof or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands.

History: En. Sec. 2, Ch. 441, L. 1993.

25-9-603. Applicability. This part applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal from the judgment is pending or it is subject to appeal.

History: En. Sec. 3, Ch. 441, L. 1993.

25-9-604. Recognition and enforcement. Except as provided in 25-9-605, a foreign judgment meeting the requirements of 25-9-603 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state that is entitled to full faith and credit.

History: En. Sec. 4, Ch. 441, L. 1993.

25-9-605. Grounds for nonrecognition. (1) A foreign judgment is not conclusive if:

(a) the judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(b) the foreign court did not have personal jurisdiction over the defendant; or

(c) the foreign court did not have jurisdiction over the subject matter.

(2) A foreign judgment need not be recognized if:

(a) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable the defendant to defend;

(b) the judgment was obtained by fraud;

(c) the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state;

(d) the judgment conflicts with another final and conclusive judgment;

(e) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(f) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

History: En. Sec. 5, Ch. 441, L. 1993.

25-9-606. Personal jurisdiction. (1) Except as provided in 25-9-605, the foreign judgment may not be refused recognition for lack of personal jurisdiction if:

(a) the defendant was served personally in the foreign state;

(b) the defendant voluntarily appeared in the proceedings other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over the defendant;

(c) the defendant, prior to the commencement of the proceedings, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(d) the defendant was domiciled in the foreign state when the proceedings were instituted or, being a body corporate, had its principal place of business, was incorporated, or had otherwise acquired corporate status in the foreign state;

(e) the defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign state; or

(f) the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action or claim for relief arising out of the operation.

(2) The courts of this state may recognize other bases of jurisdiction.

History: En. Sec. 6, Ch. 441, L. 1993.

25-9-607. Stay in case of appeal. If the defendant satisfies the court either that an appeal is pending or that the defendant is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

History: En. Sec. 7, Ch. 441, L. 1993.

25-9-608. Saving clause. This part does not prevent the recognition of a foreign judgment in situations not covered by this part.

History: En. Sec. 8, Ch. 441, L. 1993.

25-9-609. Uniformity of interpretation. This part must be construed to effectuate the general purpose to make uniform the law of those states that enact it.

History: En. Sec. 9, Ch. 441, L. 1993.

Part 7

Uniform Foreign-Money Claims Act

Part Compiler's Comments

Applicability: Section 17, Ch. 152, L. 1993, provided: "[This act] [25-9-701 through 25-9-715] applies to actions and distribution proceedings commenced after October 1, 1993."

25-9-701. Short title. This part may be cited as the "Uniform Foreign-Money Claims Act".

History: En. Sec. 1, Ch. 152, L. 1993.

25-9-702. Definitions. In this part, the following definitions apply:

(1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) "Conversion date" means the banking day preceding the date on which money, in accordance with this part, is:

(a) paid to a claimant in an action or distribution proceeding;

(b) paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

(c) used to recoup, setoff, or counterclaim in different money in an action or distribution proceeding.

(4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims are asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

(5) "Foreign money" means money other than money of the United States of America.

(6) "Foreign-money claim" means a claim upon an obligation to pay or a claim for recovery of a loss, expressed in or measured by a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to 25-9-705.

(9) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

(11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding 2 days.

(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

History: En. Sec. 2, Ch. 152, L. 1993.

25-9-703. Scope. (1) This part applies only to a foreign-money claim in an action or distribution proceeding.

(2) This part applies to foreign-money issues even if other law under the conflict-of-laws rules of this state applies to other issues in the action or distribution proceeding.

History: En. Sec. 3, Ch. 152, L. 1993.

25-9-704. Variation by agreement. (1) The effect of this part may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(2) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different money for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

History: En. Sec. 4, Ch. 152, L. 1993.

25-9-705. Determining money of claim. (1) The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

(2) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(a) regularly used between the parties as a matter of usage or course of dealing;

(b) used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(c) in which the loss was ultimately felt or will be incurred by the party claimant.

History: En. Sec. 5, Ch. 152, L. 1993.

25-9-706. Determining amount of money of certain contract claims. (1) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(2) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(3) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

History: En. Sec. 6, Ch. 152, L. 1993.

25-9-707. Asserting and defending foreign-money claim. (1) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

(2) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

(3) A person may assert a defense, setoff, recoupment, or counterclaim in any money without regard to the money of other claims.

(4) The determination of the proper money of the claim is a question of law.

History: En. Sec. 7, Ch. 152, L. 1993.

25-9-708. Judgments and awards on foreign-money claims — times of money conversion — form of judgment. (1) Except as provided in subsection (3), a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(2) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars that will purchase that foreign money on the conversion date at a bank-offered spot rate.

(3) Assessed costs must be entered in United States dollars.

(4) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(5) A judgment or award made in an action or distribution proceeding on both a defense, setoff, recoupment, or counterclaim and the adverse party's claim must be netted by converting the money of the smaller into the money of the larger and by subtracting the smaller from the larger and must specify the rates of exchange used.

(6) A judgment substantially in the following form complies with subsection (1):

IT IS ADJUDGED AND ORDERED, that Defendant
(insert name) pay to Plaintiff
(insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate - see 25-9-710) % a year or, at the option of the judgment debtor, the number of United States dollars that will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day before the day of payment, together with assessed costs of (insert amount) United States dollars.

(7) If a contract claim is of the type covered by 25-9-706(1) or (2), the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars that will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) A judgment must be filed and indexed in foreign money in the same manner, and has the same effect as a lien, as other judgments. It may be discharged by payment.

History: **En. Sec. 8, Ch. 152, L. 1993.**

25-9-709. Conversions of foreign money in distribution proceeding. The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

History: **En. Sec. 9, Ch. 152, L. 1993.**

25-9-710. Prejudgment and judgment interest. (1) Except as provided in subsection (2), recovery of prejudgment or preaward interest and the rate of interest to be applied in the action or distribution proceeding, with respect to a foreign-money claim, are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of this state.

(2) The court or arbitrator shall increase or decrease the amount of prejudgment or preaward interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment or governing conduct by a party or its attorney causing undue delay or expense.

(3) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state.

History: **En. Sec. 10, Ch. 152, L. 1993.**

25-9-711. Enforcement of foreign judgments. (1) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in 25-9-708, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(2) A foreign judgment may be filed in accordance with any rule or statute of this state providing a procedure for its recognition and enforcement.

(3) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.

(4) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this state in United States dollars only.

History: **En. Sec. 11, Ch. 152, L. 1993.**

25-9-712. Determining United States dollar value of foreign-money claims for limited purposes. (1) Computations under this section are for the limited purposes of this section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(2) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or

other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking must be ascertained as provided in subsections (3) and (4).

(3) A party seeking process, costs, bond, or other undertaking under subsection (2) shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day preceding the filing of a request or application for the issuance of process, for the determination of costs, or for an application for a bond or other court-required undertaking.

(4) A party seeking the process, costs, bond, or other undertaking under subsection (2) shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

History: En. Sec. 12, Ch. 152, L. 1993.

25-9-713. Effect of currency revalorization. (1) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(2) If substitution under subsection (1) occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

History: En. Sec. 13, Ch. 152, L. 1993.

25-9-714. Supplementary general principles of law. Unless displaced by particular provisions of this part, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement its provisions.

History: En. Sec. 14, Ch. 152, L. 1993.

25-9-715. Uniformity of application and construction. This part must be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: En. Sec. 15, Ch. 152, L. 1993.

CHAPTER 10

COSTS

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Chapter Cross-References

Allocation of costs between counties, 25-2-205.

Costs, Rule 54(d), M.R.Civ.P. (see Title 25, ch. 20).

Entry of judgment not to be delayed for costs, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

Costs on appeal, Rule 33, M.R.App.P. (see Title 25, ch. 21).

Part 1

Imposition of Costs

25-10-101. When costs allowed, of course, to plaintiff. Costs are allowed, of course, to the plaintiff upon a judgment in his favor in the following cases:

(1) in an action for the recovery of real property or damages thereto;

(2) in an action to recover the possession of personal property where the value of the property exceeds $50; such value shall be determined by the jury, court, or referee by whom the action is tried;

(3) in an action for the recovery of money or damages, exclusive of interest, when plaintiff recovers over $50;

(4) in a special proceeding;

(5) in an action which involves the title or possession or right of possession of real estate; or the legality of any tax, impost, assessment, toll, or municipal fine; or quo warranto proceedings;

(6) in an action to foreclose a lien or pledge, to prevent or abate a nuisance, or for an injunction; or

(7) in an action for property damage arising out of the ownership, maintenance, or use of a motor vehicle if he is entitled to attorney's fees under 25-10-303.

History: En. Sec. 401, p. 126, Bannack Stat.; re-en. Sec. 470, p. 229, L. 1867; re-en. Sec. 546, p. 147, Cod. Stat. 1871; re-en. Sec. 482, p. 168, L. 1877; re-en. Sec. 482, 1st Div. Rev. Stat. 1879; amd. Sec. 10, p. 11, L. 1881; re-en. Sec. 495, 1st Div. Comp. Stat. 1887; en. Sec. 1851, C. Civ. Proc. 1895; re-en. Sec. 7154, Rev. C. 1907; re-en. Sec. 9787, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1022; re-en. Sec. 9787, R.C.M. 1935; R.C.M. 1947, 93-8602; amd. Sec. 1, Ch. 528, L. 1981.

Cross-References

Actions and special proceedings defined, 27-1-102.

No costs in agreed case prior to trial, 27-7-103.

Action for claim and delivery, Title 27, ch. 17.

Costs upon dissolution of injunction, 27-19-406.

Costs upon issuance of Writ of Mandamus, 27-26-402.

Costs in quo warranto proceedings, 27-28-205.

Forcible entry and unlawful detainer, Title 70, ch. 27.

Quieting title to real property, Title 70, ch. 28.

Costs on foreclosure of lien, 71-3-124.

25-10-102. When costs allowed, of course, to defendant. Costs must be allowed, of course, to the defendant upon a judgment in his favor in the actions mentioned in 25-10-101.

History: En. Sec. 472, p. 229, L. 1867; re-en. Sec. 548, p. 148, Cod. Stat. 1871; re-en. Sec. 484, p. 169, L. 1877; re-en. Sec. 484, 1st Div. Rev. Stat. 1879; re-en. Sec. 497, 1st Div. Comp. Stat. 1887; amd. Sec. 1853, C. Civ. Proc. 1895; re-en. Sec. 7155, Rev. C. 1907; re-en. Sec. 9788, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1024; re-en. Sec. 9788, R.C.M. 1935; R.C.M. 1947, 93-8603.

25-10-103. When costs discretionary. Unless otherwise provided, in actions other than those mentioned in 25-10-101, costs may be allowed or not and, if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court, but no costs can be allowed in an action for the recovery of money or damages when the plaintiff fails to recover more than $50 or in an action to recover the possession of personal property when the value of the property is not more than $50.

History: En. Sec. 404, p. 127, Bannack Stat.; en. Sec. 473, p. 229, L. 1867; re-en. Sec. 549, p. 148, Cod. Stat. 1871; re-en. Sec. 485, p. 169, L. 1877; re-en. Sec. 485, 1st Div. Rev. Stat. 1879; amd. Sec. 11, p. 11, L. 1881; re-en. Sec. 498, 1st Div. Comp. Stat. 1887; amd. Sec. 1853, C. Civ. Proc. 1895; re-en. Sec. 7156, Rev. C. 1907; re-en. Sec. 9789, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1025; re-en. Sec. 9789, R.C.M. 1935; R.C.M. 1947, 93-8604; amd. Sec. 4, Ch. 402, L. 1979.

Cross-References

Actions and special proceedings defined, 27-1-102.

Costs in injunction proceedings, 27-19-406.

Costs in proceedings for Writ of Mandate, 27-26-402.

25-10-104. When costs of appeal discretionary. (1) In the following cases, the costs of appeal are in the discretion of the court:

(a) when a new trial is ordered;

(b) when a judgment is modified.

(2) In all other cases the successful party shall recover from the other party his costs.

History: En. Sec. 406, p. 127, Bannack Stat.; amd. Sec. 475, p. 229, L. 1867; re-en. Sec. 551, p. 148, Cod. Stat. 1871; re-en. Sec. 487, p. 169, L. 1877; re-en. Sec. 487, 1st Div. Rev. Stat. 1879; re-en. Sec. 500, 1st Div. Comp. Stat. 1887; amd. Sec. 1855, C. Civ. Proc. 1895; re-en. Sec. 7158, Rev. C. 1907; re-en. Sec. 9791, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1027; re-en. Sec. 9791, R.C.M. 1935; R.C.M. 1947, 93-8606.

Cross-References

How costs on appeal claimed, 25-10-503.

Appeal to Supreme Court, Title 25, ch. 12.

Costs, Rule 33, M.R.App.P. (see Title 25, ch. 21).

25-10-105. Costs of review other than by appeal. When the decision of a court of limited jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review in any other way than by appeal, the same costs must be allowed as in cases on appeal and may be collected by execution or in such manner as the court may direct, according to the nature of the case.

History: En. Sec. 411, p. 127, Bannack Stat.; re-en. Sec. 480, p. 230, L. 1867; re-en. Sec. 556, p. 149, Cod. Stat. 1871; re-en. Sec. 493, p. 170, L. 1877; re-en. Sec. 493, 1st Div. Rev. Stat. 1879; re-en. Sec. 506, 1st Div. Comp. Stat. 1887; re-en. Sec. 1860, C. Civ. Proc. 1895; re-en. Sec. 7163, Rev. C. 1907; re-en. Sec. 9796, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1032; re-en. Sec. 9796, R.C.M. 1935; R.C.M. 1947, 93-8611; amd. Sec. 10, Ch. 466, L. 1979.

Cross-References

Jurisdiction of Municipal Courts, 3-6-103.

Jurisdiction of Justices' Courts, 3-10-301 through 3-10-303, 25-31-101.

Extraordinary writs, Rule 17, M.R.App.P. (see Title 25, ch. 21).

Special proceedings defined, 27-1-102.

Certiorari, Title 27, ch. 25.

25-10-106. Several defendants not united in interest. When there are several defendants in the actions mentioned in 25-10-101, not united in interest and making separate defenses by separate answers, and plaintiff fails to recover judgment against all, the court must award costs to such of the defendants as have judgment in their favor.

History: En. Sec. 474, p. 229, L. 1867; re-en. Sec. 550, p. 148, Cod. Stat. 1871; re-en. Sec. 486, p. 169, L. 1877; re-en. Sec. 486, 1st Div. Rev. Stat. 1879; re-en. Sec. 499, 1st Div. Comp. Stat. 1887; re-en. Sec. 1854, C. Civ. Proc. 1895; re-en. Sec. 7157, Rev. C. 1907; re-en.

Sec. 9790, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1026; re-en. Sec. 9790, R.C.M. 1935; R.C.M. 1947, 93-8605.

Cross-References

Multiple defendants jointly and severally liable, 27-1-703.

25-10-107. Costs when tender was made before commencement of action. When, in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled and thereupon deposits in court for plaintiff the amount so tendered and the allegation be found to be true, the plaintiff cannot recover costs but must pay costs to the defendant.

History: En. Sec. 409, p. 127, Bannack Stat.; amd. Sec. 478, p. 229, L. 1867; re-en. Sec. 554, p. 148, Cod. Stat. 1871; re-en. Sec. 491, p. 170, L. 1877; re-en. Sec. 491, 1st Div. Rev. Stat. 1879; re-en. Sec. 504, 1st Div. Comp. Stat. 1887; re-en. Sec. 1858, C. Civ. Proc. 1895; re-en. Sec. 7161, Rev. C. 1907; re-en. Sec. 9794, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1030; re-en. Sec. 9794, R.C.M. 1935; R.C.M. 1947, 93-8609.

25-10-108. Imposing costs on party acting as representative. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or person expressly authorized by statute, costs may be recovered as in an action by and against a person prosecuting or defending in his own right; but such costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented unless the court directs the same to be paid by the plaintiff or defendant personally for mismanagement or bad faith in the action or defense.

History: En. Sec. 410, p. 127, Bannack Stat.; re-en. Sec. 479, p. 230, L. 1867; re-en. Sec. 555, p. 148, Cod. Stat. 1871; re-en. Sec. 492, p. 170, L. 1877; re-en. Sec. 492, 1st Div. Rev. Stat. 1879; re-en. Sec. 505, 1st Div. Comp. Stat. 1887; re-en. Sec. 1859, C. Civ. Proc. 1895; re-en. Sec. 7162, Rev. C. 1907; re-en. Sec. 9795, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1031; re-en. Sec. 9795, R.C.M. 1935; R.C.M. 1947, 93-8610.

Cross-References

Right to bring action or assert defenses, Title 27, ch. 1, part 5.

Powers, duties, and compensation of personal representatives, Title 72, ch. 3, part 6.

Personal representative, Title 72, ch. 3, part 6.

Part 2
Allowable Costs

25-10-201. Costs generally allowable. A party to whom costs are awarded in an action is entitled to include in his bill of costs his necessary disbursements, as follows:

(1) the legal fees of witnesses, including mileage, or referees and other officers;

(2) the expenses of taking depositions;

(3) the legal fees for publication when publication is directed;

(4) the legal fees paid for filing and recording papers and certified copies thereof necessarily used in the action or on the trial;

(5) the legal fees paid stenographers for per diem or for copies;

(6) the reasonable expenses of printing papers for a hearing when required by a rule of court;

(7) the reasonable expenses of making transcript for the supreme court;

(8) the reasonable expenses for making a map or maps if required and necessary to be used on trial or hearing; and

(9) such other reasonable and necessary expenses as are taxable according to the course and practice of the court or by express provision of law.

History: En. Sec. 1866, C. Civ. Proc. 1895; re-en. Sec. 7169, Rev. C. 1907; re-en. Sec. 9802, R.C.M. 1921; re-en. Sec. 9802, R.C.M. 1935; R.C.M. 1947, 93-8618.

Cross-References

Salary and expenses of court reporters, 3-5-602.

Copies of proceedings, 3-5-604.

Cost of jury, 3-15-203, 3-15-205.

Fees of Clerk of District Court, 25-1-201.

Fee of court reporter, 25-1-202.

Alternative methods of service, Title 25, ch. 3, part 5.

Attorneys' fees, Title 25, ch. 10, part 3.

Service by publication, Rule 4D(5), M.R.Civ.P. (see Title 25, ch. 20).

Expenses for failure to attend deposition, Rule 30(g), M.R.Civ.P. (see Title 25, ch. 20).

Costs as sanctions for failure to make discovery, Rule 37, M.R.Civ.P. (see Title 25, ch. 20).

Costs for interpreters, Rule 43(f), M.R.Civ.P. (see Title 25, ch. 20).

Compensation of masters, Rule 53(a), M.R.Civ.P. (see Title 25, ch. 20).

Costs of affidavits made in bad faith, Rule 56(g), M.R.Civ.P. (see Title 25, ch. 20).

Offer of judgment, Rule 68, M.R.Civ.P. (see Title 25, ch. 20).

Witness fees, Title 26, ch. 2, part 5.

25-10-202. Costs of motion. Whenever a motion is sustained or overruled, the losing party must pay to the other $10 as costs. If a motion is withdrawn before the hearing, it must be considered overruled.

History: En. Sec. 1861, C. Civ. Proc. 1895; re-en. Sec. 7164, Rev. C. 1907; re-en. Sec. 9797, R.C.M. 1921; re-en. Sec. 9797, R.C.M. 1935; R.C.M. 1947, 93-8612; amd. Sec. 99, Ch. 575, L. 1981.

25-10-203. Costs of postponement. When an application is made to the court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

History: En. Sec. 408, p. 127, Bannack Stat.; re-en. Sec. 477, p. 229, L. 1867; re-en. Sec. 553, p. 148, Cod. Stat. 1871; re-en. Sec. 490, p. 170, L. 1877; re-en. Sec. 490, 1st Div. Rev. Stat. 1879; re-en. Sec. 503, 1st Div. Comp. Stat. 1887; re-en. Sec. 1857, C. Civ. Proc. 1895; re-en. Sec. 7160, Rev. C. 1907; re-en. Sec. 9793, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1029; re-en. Sec. 9793, R.C.M. 1935; R.C.M. 1947, 93-8608.

Cross-References

Motion to postpone trial, Title 25, ch. 4, part 5.

25-10-204. Costs of transferring papers — change of venue. The costs and fees of transmitting the pleading and papers when an order is made transferring an action or proceeding for trial and of filing the papers anew must be paid by the party at whose instance the order was made; except that the party filing the complaint must pay all costs and fees of filing the papers anew and all costs and fees, including reasonable attorneys' fees to be fixed by the court, incurred by the defendant by reason of the change of venue motion and hearing when:

(1) the action is an action upon a contract, express or implied, for the direct payment of money and no claim contained in the complaint exceeds $1,000;

(2) the county designated in the complaint is not the proper county; and

(3) the plaintiff will not within 10 days after request stipulate for change of venue and defendant files a motion for such change and such motion is thereafter granted.

History: En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; R.C.M. 1947, 93-2908(part).

Cross-References

Fees of Clerk of District Court, 25-1-201.

Change of venue, Title 25, ch. 2, part 2.

Hearing outside district on agreement of parties, Rule 77(b), M.R.Civ.P. (see Title 25, ch. 20).

25-10-205. Costs of securing witnesses — substitution of judge. Whenever a motion for substitution of a judge is filed after the action or proceeding is set for trial or hearing, the party filing the motion shall pay to the opposite party all costs necessarily incurred in securing the attendance of witnesses between the date the order was made fixing the day of hearing or trial and the time the motion was filed, and such costs so paid are not recoverable in the action or proceeding.

History: En. Sec. 1, Ch. 5, Ex. L. 1903; re-en. Sec. 6511, Rev. C. 1907; re-en. Sec. 9103, R.C.M. 1921; re-en. Sec. 9103, R.C.M. 1935; R.C.M. 1947, 93-2911; amd. Sec. 100, Ch. 575, L. 1981.

Cross-References

Witness fees, Title 26, ch. 2, part 5.

25-10-206. Secretary of state's fee for accepting service of process. The fee of $5 paid by the plaintiff to the secretary of state pursuant to part 6 of chapter 3 and Rule 4D(6), M.R.Civ.P., shall be taxed as part of his costs if he prevails in the action.

History: En. Sec. 5, Ch. 10, L. 1937; amd. Sec. 11, Ch. 117, L. 1961; R.C.M. 1947, 53-205.

Part 3

Attorneys' Fees

Part Cross-References

Attorneys' fees recoverable in action challenging validity and constitutionality of local government petition for initiative or referendum, 7-5-135.

Costs generally allowable, 25-10-201.

Claiming costs, Title 25, ch. 10, part 5.

Attorneys' fees in workers' compensation cases, 39-71-611 through 39-71-614.

25-10-301. Determining compensation of attorneys. The measure and mode of compensation of attorneys and counselors at law is left to agreement, express or implied, of the parties, except that in probate proceedings the court may fix and allow the compensation of attorneys representing administrators, executors, guardians, trustees, and agents appointed by the court. But parties to actions or proceedings are entitled to costs and disbursements as provided by law.

History: En. Sec. 469, p. 228, L. 1867; re-en. Sec. 545, p. 147, Cod. Stat. 1871; re-en. Sec. 481, p. 168, L. 1877; re-en. Sec. 481, 1st Div. Rev. Stat. 1879; re-en. Sec. 494, 1st Div. Comp. Stat. 1887; amd. Sec. 1850, C. Civ. Proc. 1895; re-en. Sec. 7153, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1919; re-en. Sec. 9786, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1021; re-en. Sec. 9786, R.C.M. 1935; R.C.M. 1947, 93-8601.

Cross-References

Costs generally allowable, 25-10-201.

Claiming costs, Title 25, ch. 10, part 5.

Allowance of attorneys' fees to unlicensed persons forbidden, 37-61-215.

Judgment lien for compensation, 37-61-420.

Settlement of fees in estates and probate proceedings, 72-3-634.

25-10-302. Inclusion of attorney's fees in bill of costs. The attorney's fees mentioned in 30-9-511, 71-1-233, 71-3-124, and 25-10-303 need not be included in the cost bill if they are made a part of the judgment.

History: En. Sec. 1865, C. Civ. Proc. 1895; re-en. Sec. 7168, Rev. C. 1907; re-en. Sec. 9801, R.C.M. 1921; re-en. Sec. 9801, R.C.M. 1935; R.C.M. 1947, 93-8617; amd. Sec. 2, Ch. 528, L. 1981.

Cross-References

Judgment, Title 25, ch. 9.

Costs, Rule 54(d), M.R.Civ.P. (see Title 25, ch. 20).

Attorney's or litigant's liability for excess costs when he unreasonably multiplies proceedings, 37-61-421.

25-10-303. Attorney's fees — motor vehicle claim. In an action involving solely the recovery of property damages arising out of the ownership, maintenance, or use of a motor vehicle, in which the plaintiff secures a judgment equal to or greater than the amount of damages claimed by the plaintiff in his last written offer to the defendant or his agent prior to the filing of the cause of action, the court shall allow plaintiff's reasonable attorney's fee, which shall be fixed by the court, not withstanding any agreement between the parties to the contrary. If the defendant or his agent fails to make any offer within 15 days of the date requested to do so by the plaintiff, the plaintiff may file the cause of action and, if successful in the action, shall be entitled to his reasonable attorney's fee under this provision.

History: En. Sec. 3, Ch. 528, L. 1981.

Cross-References

When costs allowed on motor vehicle claim, 25-10-101.

Part 4
Officers' Fees, Prepayment

25-10-401. Itemization of officer's fees. No fees of any officer shall be payable until an itemized account of the same, signed by the officer, shall be presented to the person liable therefor.

History: En. Sec. 11, p. 52, L. 1874; re-en. Sec. 815, 1st Div. Rev. Stat. 1879; re-en. Sec. 521, 1st Div. Comp. Stat. 1887; en. Sec. 1877, C. Civ. Proc. 1895; re-en. Sec. 7180, Rev. C. 1907; re-en. Sec. 9813, R.C.M. 1921; re-en. Sec. 9813, R.C.M. 1935; R.C.M. 1947, 93-8629.

Cross-References

Court reporters, Title 3, ch. 5, part 6.

Sheriffs' department, Title 7, ch. 32, part 21.

Fees of Clerk of District Court, 25-1-201.

25-10-402. No charge for copies furnished by party. In all cases where copies of pleadings, affidavits, or other papers are to be served, neither the sheriff nor clerk shall charge or receive a fee for making such copies when the same are furnished to such officer by the party to the action or his attorney.

History: En. Sec. 1905, C. Civ. Proc. 1895; re-en. Sec. 7199, Rev. C. 1907; re-en. Sec. 9832, R.C.M. 1921; re-en. Sec. 9832, R.C.M. 1935; R.C.M. 1947, 93-8717.

Cross-References

Service by an officer, Title 25, ch. 3, part 2.

Service of telephonic or telegraphic copy, 25-3-501.

Lost papers, 25-4-111.

25-10-403. Prepayment of fees. Each party to a civil action is required to pay the fees fixed by law for the performance of any service or duty by any officer of such court at the instance of such party at the time such service is rendered, except in the case mentioned in 25-10-405 and 25-10-701; and no such officer is required to perform such service or duty unless the fees fixed therefor are, on demand, first paid or tendered.

History: En. Sec. 565, p. 150, Cod. Stat. 1871; re-en. Sec. 505, p. 173, L. 1877; re-en. Sec. 505, 1st Div. Rev. Stat. 1879; re-en. Sec. 518, 1st Div. Comp. Stat. 1887; re-en. Sec. 1875, C. Civ. Proc. 1895; re-en. Sec. 7178, Rev. C. 1907; re-en. Sec. 9811, R.C.M. 1921; re-en. Sec. 9811, R.C.M. 1935; R.C.M. 1947, 93-8627.

Cross-References

Court reporters, Title 3, ch. 5, part 6.

Collection and disposal of fees, 7-4-2511.

Sheriffs' department, Title 7, ch. 32, part 21.

Fees of Clerk of District Court, 25-1-201.

25-10-404. Poor persons not required to prepay fees. (1) Except as provided in subsection (3), a person may request a waiver of fees by filing an affidavit, supported by a financial statement, stating that the person has a good cause of action or defense and is unable to pay the costs or procure security to secure the cause of action or defense. Except as provided in subsection (2), upon issuance of an order of the court or administrative tribunal approving a request for waiver of fees, the person may commence and prosecute or defend an action in any of the courts and administrative tribunals of this state and the officers of the courts and administrative tribunals shall issue and serve all writs and perform all services in the action without demanding or receiving their fees in advance.

(2) If a judge or presiding officer of an administrative tribunal is not available to approve a request for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval. If the request is subsequently denied, the fees must be paid before the case may proceed further.

(3) A person represented by an entity that provides free legal services to indigent persons is not required to file the financial statement required by subsection (1).

(4) The department of justice shall, by rule, prescribe the form of the financial statement required by subsection (1) for use in determining indigence. The form may require the disclosure of income and assets, including but not limited to the ownership of real and personal property, cash, and savings.

History: En. Sec. 2, p. 71, L. 1869; re-en. Sec. 563, p. 150, Cod. Stat. 1871; amd. Sec. 1, p. 40, Ex. L. 1873; amd. Sec. 503, p. 173, L. 1877; re-en. Sec. 503, 1st Div. Rev. Stat. 1879; re-en. Sec. 516, 1st Div. Comp. Stat. 1887; re-en. Sec.1873, C. Civ., Proc. 1895; re-en. Sec. 7176, Rev. C. 1907; re-en. Sec. 9809, R.C.M. 1921; re-en. Sec. 9809, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1971; amd. Sec. 1, Ch. 90, L. 1973; R.C.M. 1947, 93-8625; amd. Sec. 1, Ch. 447, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 447 at beginning of first sentence of (1) inserted exception clause and near beginning, after "person", substituted "may request a waiver of fees by filing an affidavit, supported by a financial statement" for "who will file an affidavit" and at beginning of second sentence inserted "Except as provided in subsection (2), upon issuance of an order of the court or administrative tribunal approving a request for waiver of fees, the person"; inserted (2) regarding waiver or payment of fees under certain circumstances; inserted (3) precluding filing of the financial statement by a person represented by an entity that provides free legal services; inserted (4) regarding the form of the financial statement; and made minor changes in style.

Cross-References

Appeals in forma pauperis, Rule 18, M.R.App.P. (see Title 25, ch. 21).

25-10-405. Governmental entities not required to prepay fees — exceptions. The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(p) for filing a motion for substitution of a judge and all fees for photocopies, postage and handling, certifications, authentications, and record searches.

History: En. Sec. 564, p. 150, Cod. Stat. 1871; re-en. Sec. 504, p. 173, L. 1877; re-en. Sec. 504, 1st Div. Rev. Stat 1879; re-en. Sec. 517, 1st Div. Comp. Stat. 1887; en. Sec. 1874, C. Civ. Proc. 1895; re-en. Sec. 7177, Rev. C. 1907; re-en. Sec. 9810, R.C.M. 1921; amd. Sec. 1, Ch. 9, L. 1925; re-en. Sec. 9810, R.C.M. 1935; R.C.M. 1947, 93-8626(part); amd. Sec. 3, Ch. 318, L. 1987; amd. Sec. 1, Ch. 466, L. 1991; amd. Sec. 2, Ch. 570, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 570 near end, after "handling", inserted "certifications". Amendment effective July 1, 1993.

Cross-References

Public officers not personally liable for costs, 25-10-701.

Advanced payment for witnesses of state or county not required, 26-2-508.

25-10-406. Collection of clerk's and sheriff's costs after judgment. In all cases, after final judgment, the clerk or sheriff may make out a bill of costs against the party incurring them, and if not paid within 20 days after demand, execution may issue in the name of the parties to the action for the benefit of the clerk or sheriff.

History: En. Sec. 10, p. 51, L. 1874; re-en. Sec. 814, 1st Div. Rev. Stat. 1879; re-en. Sec. 520, 1st Div. Comp. Stat. 1887; en. Sec. 1876, C. Civ. Proc. 1895; re-en. Sec. 7179, Rev. C. 1907; re-en. Sec. 9812, R.C.M. 1921; re-en. Sec. 9812, R.C.M. 1935; R.C.M. 1947, 93-8628.

Cross-References

Sheriffs' department, Title 7, ch. 32, part 21.

Fees of Clerk of District Court, 25-1-201.

Prepayment of costs of service, 25-3-203.

Part 5
Claiming Costs

Part Cross-References

Entry of judgment not to be delayed for taxing of costs, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

25-10-501. Bill of costs. The party in whose favor judgment is rendered and who claims his costs must deliver to the clerk and serve upon the adverse party, within 5 days after the verdict or notice of the decision of the court or referee or, if the entry of the judgment on the verdict or decision be stayed, then before such entry is made, a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum must be verified by the oath of the party, his attorney or agent, or the clerk of his attorney, stating that to the best of his knowledge and belief the items are correct and that the disbursements have been necessarily incurred in the action or proceeding.

History: En. Sec. 412, p. 128, Bannack Stat.; amd. Sec. 481, p. 230, L. 1867; re-en. Sec. 557, p. 149, Cod. Stat. 1871; amd. Sec. 1, p. 39, Ex. L. 1873; amd. Sec. 9, p. 51, L. 1874; amd. Secs. 494-497, p. 171, L. 1877; re-en. Secs. 494-497, 1st Div. Rev. Stat. 1879; re-en. Secs. 507-510, 1st Div. Comp. Stat. 1887; re-en. Sec. 1867, C. Civ. Proc. 1895; re-en. Sec. 7170, Rev. C. 1907; re-en. Sec. 9803, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1033; re-en. Sec. 9803, R.C.M. 1935; R.C.M. 1947, 93-8619(part).

25-10-502. Procedure upon objection to bill of costs. A party dissatisfied with the costs claimed may, within 5 days after notice of filing of the bill of costs, file and serve a notice of a motion to have the same taxed by the court in which the judgment was rendered or by the judge thereof at chambers.

History: En. Sec. 412, p. 128, Bannack Stat.; amd. Sec. 481, p. 230, L. 1867; re-en. Sec. 557, p. 149, Cod. Stat. 1871; amd. Sec. 1, p. 39, Ex. L. 1873; amd. Sec. 9, p. 51, L. 1874; amd. Secs. 494-497, p. 171, L. 1877; re-en. Secs. 494-497, 1st Div. Rev. Stat. 1879; re-en. Secs. 507-510, 1st Div. Comp. Stat. 1887; re-en. Sec. 1867, C. Civ. Proc. 1895; re-en. Sec. 7170, Rev. C. 1907; re-en. Sec. 9803, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1033; re-en. Sec. 9803, R.C.M. 1935; R.C.M. 1947, 93-8619(part).

Cross-References

Powers of judges at chambers, 3-5-311.

Pleadings, motions, and other papers, Title 25, ch. 4.

25-10-503. How costs on appeal claimed. Whenever costs are awarded to a party by an appellate court, if he claims such costs, he must, within 30 days after the remittitur is filed with the clerk below, deliver to such clerk a memorandum of his costs, verified as prescribed in 25-10-501, and thereafter he may have an execution therefor as upon a judgment.

History: En. Sec. 499, p. 172, L. 1877; re-en. Sec. 499, 1st Div. Rev. Stat. 1879; re-en. Sec. 512, 1st Div. Comp. Stat. 1887; re-en. Sec. 1869, C. Civ. Proc. 1895; re-en. Sec. 7172, Rev. C. 1907; re-en. Sec. 9805, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1034; re-en. Sec. 9805, R.C.M. 1935; R.C.M. 1947, 93-8621.

Cross-References

When costs of appeal discretionary, 25-10-104.

Appeal to Supreme Court, Title 25, ch. 12.

Remittitur must be certified to Clerk of District Court, Rule 16, M.R.App.P. (see Title 25, ch. 21).

Costs, Rule 33, M.R.App.P. (see Title 25, ch. 21).

Notice of remittitur, Rule 35, M.R.App.P. (see Title 25, ch. 21).

25-10-504. Clerk to include costs in judgment. The clerk must include in the judgment entered up by him the costs, if the same have been taxed or ascertained; and he must, within 2 days after the same are taxed or ascertained, if not included in the judgment, insert the same in a blank left in the judgment for that purpose and must make a similar insertion of the costs in the copies and docket of the judgment.

History: En. Sec. 482, p. 230, L. 1867; re-en. Sec. 558, p. 149, Cod. Stat. 1871; re-en. Sec. 500, p. 172, L. 1877; re-en. Sec. 500, 1st Div. Rev. Stat. 1879; re-en. Sec. 513, 1st Div. Comp. Stat. 1887; re-en. Sec. 1870, C. Civ. Proc. 1895; re-en. Sec. 7173, Rev. C. 1907; re-en. Sec. 9806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1035; re-en. Sec. 9806, R.C.M. 1935; R.C.M. 1947, 93-8622(part).

Cross-References

Entry of judgment not to be delayed for taxing of costs, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

Part 6
Security for Costs

25-10-601. Security for costs from nonresident plaintiff. When the plaintiff in an action resides out of this state or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment or in the progress of the action, not exceeding $300. A new or an additional undertaking may be ordered by the court or judge upon proof that the original undertaking is insufficient security and proceedings in the action stayed until such new or additional undertaking is executed and filed.

History: En. Sec. 414, p. 128, Bannack Stat.; amd. Sec. 483, p. 230, L. 1867; re-en. Sec. 559, p. 149, Cod. Stat. 1871; re-en. Sec. 501, p. 172, L. 1877; re-en. Sec. 501, 1st Div. Rev. Stat. 1879; re-en. Sec. 514, 1st Div. Comp. Stat. 1887; re-en. Sec. 1871, C. Civ. Proc. 1895; re-en. Sec. 7174, Rev. C. 1907; re-en. Sec. 9807, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1036; re-en. Sec. 9807, R.C.M. 1935; R.C.M. 1947, 93-8623.

Cross-References

Extension of time for giving security, 25-1-301.

Deposit of money in lieu of undertaking, 25-1-401.

25-10-602. Dismissal when security not given. After the lapse of 30 days from the service of notice that security is required or of an order for new or additional security, upon proof thereof and that no undertaking as required has been filed, the court or judge may order the action to be dismissed.

History: En. Sec. 485, p. 230, L. 1867; re-en. Sec. 561, p. 149, Cod. Stat. 1871; re-en. Sec. 502, p. 173, L. 1877; re-en. Sec. 502, 1st Div. Rev. Stat. 1879; re-en. Sec. 515, 1st Div. Comp. Stat. 1887; re-en. Sec. 1872, C. Civ. Proc. 1895; re-en. Sec. 7175, Rev. C. 1907; re-en. Sec. 9808, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1037; re-en. Sec. 9808, R.C.M. 1935; R.C.M. 1947, 93-8624.

Cross-References

Judgment on merits, 25-9-101.

Involuntary dismissal, Rule 41(b), M.R.Civ.P. (see Title 25, ch. 20).

Costs of previously-dismissed action, Rule 41(d), M.R.Civ.P. (see Title 25, ch. 20).

Part 7
Payment of Costs by Governmental Entities

Part Cross-References

State liability exposure and insurance coverage, Title 2, ch. 9.

Governmental entities not required to give security, 25-1-402.

Costs, Rule 54(d), M.R.Civ.P. (see Title 25, ch. 20).

25-10-701. Public officers not to be personally taxed. No officer prosecuting or defending as provided in 25-10-405 shall be taxed with costs or damages, but such costs or damages, if any, shall be taxed to the state, county, or municipality, as the case may be.

History: En. Sec. 564, p. 150, Cod. Stat. 1871; re-en. Sec. 504, p. 173, L. 1877; re-en. Sec. 504, 1st Div. Rev. Stat 1879; re-en. Sec. 517, 1st Div. Comp. Stat. 1887; en. Sec. 1874, C. Civ. Proc. 1895; re-en. Sec. 7177, Rev. C. 1907; re-en. Sec. 9810, R.C.M. 1921; amd. Sec. 1, Ch. 9, L. 1925; re-en. Sec. 9810, R.C.M. 1935; R.C.M. 1947, 93-8626(part).

Cross-References
Immunization and indemnification of public employees, 2-9-305.

25-10-702. Payment of costs by state. When the state is a party and costs are awarded against it, they must be paid out of the state treasury.

History: En. Sec. 1878, C. Civ. Proc. 1895; re-en. Sec. 7181, Rev. C. 1907; re-en. Sec. 9814, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1038; re-en. Sec. 9814, R.C.M. 1935; R.C.M. 1947, 93-8630.

Cross-References
Payment of judgments against the state, 2-9-315.

25-10-703. Payment of costs by county. When a county is a party and costs are awarded against it, they must be paid out of the county treasury.

History: En. Sec. 1879, C. Civ. Proc. 1895; re-en. Sec. 7182, Rev. C. 1907; re-en. Sec. 9815, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1039; re-en. Sec. 9815, R.C.M. 1935; R.C.M. 1947, 93-8631.

Cross-References
Payment of judgments against governmental entities, 2-9-316.
Judgments against county or county officers, 25-13-205.

25-10-704 through 25-10-710 reserved.

25-10-711. Award of costs against governmental entity when suit or defense is frivolous or pursued in bad faith. (1) In any civil action brought by or against the state, a political subdivision, or an agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in 25-10-201 and reasonable attorney's fees as determined by the court if:

(a) he prevails against the state, political subdivision, or agency; and

(b) the court finds that the claim or defense of the state, political subdivision, or agency that brought or defended the action was frivolous or pursued in bad faith.

(2) Costs may be granted pursuant to subsection 1 notwithstanding any other provision of the law to the contrary.

History: En. Sec. 1, Ch. 402, L. 1979.

Cross-References
Government entities not required to give security, 25-1-402.
Judgments against county or county officer, 25-13-205.
Garnishment of public officers, 25-13-504.
Governmental property exempt from execution, 25-13-613.

CHAPTER 11

NEW TRIAL

Part 1 — General Provisions

25-11-101. New trial defined.
25-11-102. Grounds for new trial.
25-11-103. Grounds after trial by the court.
25-11-104. How motion for new trial made.

Chapter Cross-References

Procedure when a juror becomes sick, 25-7-304.

Procedure when jury prevented from giving verdict, 25-7-305.

Costs of appeal from order of new trial discretionary with court, 25-10-104.

New trial — amendment of judgment, Rule 59, M.R.Civ.P. (see Title 25, ch. 20).

Grounds for appeal, Rule 1, M.R.App.P. (see Title 25, ch. 21).

Motion for a new trial — criminal procedure, Title 46, ch. 16, part 7.

Part 1

General Provisions

25-11-101. New trial defined. A new trial is a reexamination of an issue of fact in the same court after a trial and decision by a jury or court or by referees.

History: En. Sec. 168, p. 76, Bannack Stat.; en. Sec. 192, p. 171, L. 1867; re-en. Sec. 232, p. 74, Cod. Stat. 1871; re-en. Sec. 284, p. 111, L. 1877; re-en. Sec. 284, 1st Div. Rev. Stat. 1879; re-en. Sec. 295, 1st Div. Comp. Stat. 1887; re-en. Sec. 1170, C. Civ. Proc. 1895; re-en. Sec. 6793, Rev. C. 1907; re-en. Sec. 9395, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 656; re-en. Sec. 9395, R.C.M. 1935; R.C.M. 1947, 93-5601.

25-11-102. Grounds for new trial. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of such party:

(1) irregularity in the proceedings of the court, jury, or adverse party or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

(2) misconduct of the jury. Whenever any one or more of the jurors have been induced to assent to any general or special verdict or to a finding on any question submitted to them by the court by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors.

(3) accident or surprise which ordinary prudence could not have guarded against;

(4) newly discovered evidence material for the party making the application which he could not, with reasonable diligence, have discovered and produced at the trial;

(5) excessive damages appearing to have been given under the influence of passion or prejudice;

(6) insufficiency of the evidence to justify the verdict or other decision or that it is against law;

(7) error in law occurring at the trial and excepted to by the party making the application.

History: En. Sec. 169, p. 76, Bannack Stat.; amd. Sec. 193, p. 171, L. 1867; re-en. Sec. 233, p. 74, Cod. Stat. 1871; amd. Sec. 285, p. 111, L. 1877; re-en. Sec. 285, 1st Div. Rev. Stat. 1879; amd. Sec. 7, p. 10, L. 1881; re-en. Sec. 296, 1st Div. Comp. Stat. 1887; re-en. Sec. 1171, C. Civ. Proc. 1895; re-en. Sec. 6794, Rev. C. 1907; re-en. Sec. 9397, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 657; amd. Sec. 1, Ch. 68, L. 1935; re-en. Sec. 9397, R.C.M. 1935; R.C.M. 1947, 93-5603; amd. Sec. 101, Ch. 575, L. 1981.

Cross-References

Power of Supreme Court to order new trial, 3-2-204.

Grounds for motion to be stated with particularity, Rule 59(a), M.R.Civ.P. (see Title 25, ch. 20).

Order granting new trial to state grounds for order, Rule 59(f), M.R.Civ.P. (see Title 25, ch. 20).

Relief from judgment for reasons undiscovered in time for motion, Rule 60(b), M.R.Civ.P. (see Title 25, ch. 20).

Harmless error not grounds for new trial, Rule 61, M.R.Civ.P. (see Title 25, ch. 20).

25-11-103. Grounds after trial by the court. No new trial may be granted in cases tried by the court without a jury, except on the grounds mentioned in subsections (1), (3), and (4) of 25-11-102.

History: En. Sec. 5, Ch. 225, L. 1921; re-en. Sec. 9396, R.C.M. 1921; re-en. Sec. 9396, R.C.M. 1935; R.C.M. 1947, 93-5602; amd. Sec. 102, Ch. 575, L. 1981.

Cross-References

Issues of law to be decided by the court, 25-7-102.

Province of court and jury, Title 26, ch. 1, part 2.

Court to decide questions of law, Rule 202(g), M.R.Ev. (see Title 26, ch. 10).

25-11-104. How motion for new trial made. (1) Motions for new trials shall be made as follows:

(a) For causes mentioned in 25-11-102(1), the motion shall be made on affidavits or on the minutes of the court.

(b) For causes mentioned in subsection (2), (3), or (4) of 25-11-102, the motion shall be made only on affidavits.

(c) For causes mentioned in subsection (5), (6), or (7) of 25-11-102, the motion shall be made only on the minutes of the court.

(2) The official stenographic reports of the trial may be referred to as a part of the minutes of the court.

History: En. Sec. 170, p. 77, Bannack Stat.; re-en. Sec. 234, p. 75, Cod. Stat. 1871; amd. Sec. 286, p. 112, L. 1877; re-en. Sec. 286, 1st Div. Rev. Stat. 1879; re-en. Sec. 297, 1st Div. Comp. Stat. 1887; re-en. Sec. 1172, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 41, L. 1907; Sec. 6795, Rev. C. 1907; amd. Sec. 6, Ch. 225, L. 1921; re-en. Sec. 9398, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 658; amd. Sec. 2, Ch. 68, L. 1935; re-en. Sec. 9398, R.C.M. 1935; R.C.M. 1947, 93-5604; amd. Sec. 103, Ch. 575, L. 1981.

Cross-References

Enlargement of time for motion, Rule 6(b), M.R.Civ.P. (see Title 25, ch. 20).

Joined with motion for judgment notwithstanding the verdict, Rule 50(b), M.R.Civ.P. (see Title 25, ch. 20).

Joined with motion to amend findings, Rule 52(b), M.R.Civ.P. (see Title 25, ch. 20).

Time for serving affidavits, Rule 59(c), M.R.Civ.P. (see Title 25, ch. 20).

Stay of execution pending motion, Rule 62(b), M.R.Civ.P. (see Title 25, ch. 20).

Motion as suspending time for appeal, Rule 5, M.R.App.P. (see Title 25, ch. 21).

CHAPTER 12

APPEAL TO SUPREME COURT

Part 1 — General Provisions

25-12-101. Exclusive method of review.
25-12-102. Cases in which appeal may be taken.

Chapter Cross-References

When costs of appeal discretionary, 25-10-104.

How costs on appeal claimed, 25-10-503.

Part 1
General Provisions

25-12-101. Exclusive method of review. A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed by the Rules of Appellate Procedure and not otherwise.

History: En. Sec. 248, p. 94, Bannack Stat.; re-en. Sec. 317, p. 199, L. 1867; re-en. Sec. 366, p. 107, Cod. Stat. 1871; re-en. Sec. 405, p. 149, L. 1877; re-en. Sec. 405, 1st Div. Rev. Stat. 1879; re-en. Sec. 418, 1st Div. Comp. Stat. 1887; re-en. Sec. 1720, C. Civ. Proc. 1895; re-en. Sec. 7096, Rev. C. 1907; re-en. Sec. 9729, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 936; re-en. Sec. 9729, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-8001(part).

Cross-References

Appeals from District Court to Supreme Court, Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

Statutes superseded by appellate rules, Rule 53, M.R.App.P. (see Title 25, ch. 21).

25-12-102. Cases in which appeal may be taken. A party aggrieved may appeal in the cases prescribed in the Rules of Appellate Procedure.

History: En. Sec. 248, p. 94, Bannack Stat.; amd. Sec. 319, p. 199, L. 1867; re-en. Sec. 368, p. 107, Cod. Stat. 1871; re-en. Sec. 407, p. 150, L. 1877; re-en. Sec. 407, 1st Div. Rev. Stat. 1879; re-en. Sec. 420, 1st Div. Comp. Stat. 1887; re-en. Sec. 1721, C. Civ. Proc. 1895; re-en. Sec. 7097, Rev. C. 1907; re-en. Sec. 9730, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 938; re-en. Sec. 9730, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-8002(part).

Cross-References

Judgments or orders from which appeal may be taken, Rule 1, M.R.App.P. (see Title 25, ch. 21).

What court may review on appeal, Rule 2, M.R.App.P. (see Title 25, ch. 21).

CHAPTER 13

EXECUTION OF JUDGMENT

Part 1 — Right to Enforcement of Judgment

25-13-101. Time limit for issuing execution.
25-13-102. Execution after six years.
25-13-103. Execution after death of a party.
25-13-104. Compelling contribution or repayment — joint debtor, surety.
25-13-105. Compelling repayment — surety on appeal.

Part 2 — Method of Enforcement

25-13-201. Judgments for money or the possession of property.
25-13-202. Judgments requiring the sale of property.
25-13-203. Judgments requiring the performance of specific acts.
25-13-204. Enforcement of order to pay money.
25-13-205. Judgments against county or county officer.

Part 3 — Contents of Writ

25-13-301. Form and contents of writ.
25-13-302. Execution against principal debtor before surety.
25-13-303. Execution when only some of defendants served.
25-13-304. Execution against property of judgment debtor.
25-13-305. Execution of lien on real property.
25-13-306. Execution against property in hands of representative.

25-13-307. Execution requiring delivery of possession of property.
25-13-308. Execution against person of judgment debtor.

Part 4 — Execution and Return of Writ

25-13-401. To whom execution issued.
25-13-402. How writ executed.
25-13-403. Security for costs when property seized.
25-13-404. Return of the execution.
25-13-405. Clerk to record returned execution when levy on real property.
25-13-406 through 25-13-410 reserved.
25-13-411. Repealed.

Part 5 — Property Subject to Execution

25-13-501. What property subject to execution.
25-13-502. Debts owed to judgment debtor.
25-13-503. Property claimed by third persons.
25-13-504. Garnishment of public officers.
25-13-505. Personal property subject to a security interest.
25-13-506. Duty of secured party.

Part 6 — Property Exempt From Execution

25-13-601. Waiver of exemptions in unsecured note unenforceable.
25-13-602. Repealed.
25-13-603 through 25-13-605 reserved.
25-13-606. Protection of property of residents.
25-13-607. Claim enforceable against exempt property.
25-13-608. Property exempt without limitation — exceptions.
25-13-609. Personal property exempt subject to value limitations.
25-13-610. Tracing exempt personal property.
25-13-611. Repealed.
25-13-612. Repealed.
25-13-613. Property necessary to carry out governmental functions.
25-13-614. Earnings of judgment debtor.
25-13-615. Homestead.
25-13-616. Repealed.
25-13-617. Repealed.

Part 7 — Sale on Execution

25-13-701. Notice of sale on execution.
25-13-702. Penalty for selling without notice or destruction of notice.
25-13-703. Postponement of sale.
25-13-704. Conduct of sale.
25-13-705. Procedure when purchaser refuses to pay.
25-13-706. Rejection of subsequent bids after refusal to pay.
25-13-707. Liability of officer after resale.
25-13-708. Conveyance of personal property capable of manual delivery.
25-13-709. Conveyance of personal property not capable of manual delivery.
25-13-710. Real property — what interest transferred.
25-13-711. Real property — certificate of sale.
25-13-712. Property subject to a security interest — disposition of proceeds, security agreement.
25-13-713. Procedure when sale invalidated, revival of judgment.
25-13-714. Validation of defective judicial sales.

Part 8 — Redemption of Real Property

25-13-801. Who may redeem.
25-13-802. Time for redemption — amount to be paid.
25-13-803. Subsequent redemptions — when permitted, amount paid.
25-13-804. Redemption by stockholder or corporation.
25-13-805. Redemption by debtor from spouse.
25-13-806. Notice of redemption, liens, and taxes and assessments paid.

25-13-807. Papers redemptioner must produce.
25-13-808. To whom redemption money paid.
25-13-809. Effect of redemption by debtor or debtor's spouse — certificate of redemption.
25-13-810. When purchaser entitled to conveyance.
25-13-811. Who to execute conveyance.
25-13-812 through 25-13-820 reserved.
25-13-821. Possession of lands during redemption period.
25-13-822. Rents and profits during redemption period, accounting.
25-13-823. Restraint of waste during redemption period.
25-13-824. Enjoining injury to property after sale and before conveyance.
25-13-825. Damages for injury to property after sale and before conveyance.

Part 9 — Disposal of Foreclosed Agricultural Land

25-13-901. Definitions.
25-13-902. Right of first refusal.
25-13-903. Time to exercise right.
25-13-904. Notice required from immediately preceding owner.

Chapter Cross-References

Execution for costs of clerk and Sheriff, 25-10-406.

Execution for costs awarded on appeal, 25-10-503.

Proceedings in aid of execution, Title 25, ch. 14.

Writ of Execution for compensation of master, Rule 53(a), M.R.Civ.P. (see Title 25, ch. 20).

Execution of judgment to comply with statutes, Rule 69, M.R.Civ.P. (see Title 25, ch. 20).

Stay of execution pending appeal, Rule 7, M.R.App.P. (see Title 25, ch. 21).

Statute of Limitations on action against Sheriff for nonpayment of money collected by execution, 27-2-209.

Execution for balance due following prejudgment attachment, 27-18-905.

Execution for damages and costs upon Writ of Mandate, 27-26-402.

Default, Title 30, ch. 9, part 5.

Exempt property not assigned by general assignment, 31-2-227.

Priority in cases of execution or attachment, 71-3-303.

Part 1

Right to Enforcement of Judgment

Part Cross-References

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Judgments — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

25-13-101. Time limit for issuing execution. (1) Except as provided in subsection (2), the party in whose favor the judgment is given may, at any time within 6 years after the entry thereof, have a writ of execution issued for its enforcement.

(2) When the judgment is for the payment of child support, the party in whose favor the judgment is given may, at any time within 10 years after the termination of the support obligation, have a writ of execution issued for its enforcement.

History: En. Sec. 183, p. 79, Bannack Stat.; re-en. Sec. 209, p. 176, L. 1867; re-en. Sec. 250, p. 80, Cod. Stat. 1871; amd. Sec. 301, p. 118, L. 1877; re-en. Sec. 301, 1st Div. Rev. Stat. 1879; re-en. Sec. 312, 1st Div. Comp. Stat. 1887; amd. Sec. 1210, C. Civ. Proc. 1895; re-en. Sec. 6813, Rev. C. 1907; re-en. Sec. 9416, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 681; re-en. Sec. 9416, R.C.M. 1935; R.C.M. 1947, 93-5801; amd. Sec. 4, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 at beginning of (1) inserted exception clause; inserted (2) allowing for issuance of a writ of execution for 10 years after termination of the support obligation; and made minor changes in style.

25-13-102. Execution after six years. In all cases, the judgment may be enforced or carried into execution after the lapse of 6 years from the date of its entry by leave of the court, upon motion, or by judgment for that purpose founded upon supplemental pleadings.

History: En. Sec. 7, p. 51, L. 1874; re-en. Sec. 813, 1st Div. Rev. Stat. 1879; re-en. Sec. 349, 1st Div. Comp. Stat. 1887; en. Sec. 1215, C. Civ. Proc. 1895; re-en. Sec. 6818, Rev. C. 1907; re-en. Sec. 9421, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 685; re-en. Sec. 9421, R.C.M. 1935; R.C.M. 1947, 93-5807.

25-13-103. Execution after death of a party. Notwithstanding the death of a party after the judgment, execution thereon may be issued or it may be enforced as follows:

(1) In case of the death of the judgment creditor, it may be enforced upon the application of his executor or administrator or successor in interest.

(2) In case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property or the enforcement of a lien thereon, execution may be issued with the same effect as if he were still living.

History: En. Sec. 215, p. 178, L. 1867; re-en. Sec. 256, p. 82, Cod. Stat. 1871; re-en. Sec. 306, p. 120, L. 1877; re-en. Sec. 306, 1st Div. Rev. Stat. 1879; re-en. Sec. 317, 1st Div. Comp. Stat. 1887; re-en. Sec. 1216, C. Civ. Proc. 1895; re-en. Sec. 6819, Rev. C. 1907; re-en. Sec. 9422, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 686; re-en. Sec. 9422, R.C.M. 1935; R.C.M. 1947, 93-5808.

Cross-References

Real party in interest, Rule 17, M.R.Civ.P. (see Title 25, ch. 20).

Substitution by death, Rule 25(a), M.R.Civ.P. (see Title 25, ch. 20).

Right to bring action or assert defense, Title 27, ch. 1, part 5.

25-13-104. Compelling contribution or repayment — joint debtor, surety. (1) When property liable to an execution against several persons is sold thereon and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of property of one of them or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several and is upon an obligation of one of them as surety for another and the surety pays the amount or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal.

(2) In such case, the person so paying or contributing is entitled to the benefit of the judgment to enforce contribution or repayment if, within 10 days after his payment, he file with the clerk of the court where judgment was rendered notice of his payment and claim to contribution or repayment. Upon the filing of such notice, the clerk must make an entry thereof in the margin of the docket.

History: En. Sec. 337, p. 132, L. 1877; re-en. Sec. 337, 1st Div. Rev. Stat. 1879; re-en. Sec. 348, 1st Div. Comp. Stat. 1887; re-en. Sec. 1242, C. Civ. Proc. 1895; re-en. Sec. 6845, Rev. C. 1907; re-en. Sec. 9451, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 709; re-en. Sec. 9451, R.C.M. 1935; R.C.M. 1947, 93-5843; amd. Sec. 104, Ch. 575, L. 1981.

Cross-References

Joint debtor's right of contribution — discharge, 25-15-202.

Multiple defendants' liability — right of contribution, 27-1-703.

Right to contribution from joint debtors, 28-1-303.

Surety's right to reimbursement and contribution, 28-11-417.

25-13-105. Compelling repayment — surety on appeal. Whenever any surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate court, he is substituted to the rights of the judgment creditor and is entitled to control, enforce, and satisfy such judgment in all respects as if he had recovered the same.

History: En. Sec. 1903, C. Civ. Proc. 1895; re-en. Sec. 7197, Rev. C. 1907; re-en. Sec. 9830, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1059; re-en. Sec. 9830, R.C.M. 1935; R.C.M. 1947, 93-8715.

Cross-References

Undertaking for security, Title 25, ch. 1, part 4.

Stay of judgment or order pending appeal, Rule 7, M.R.App.P. (see Title 25, ch. 21).

Sureties and their justification, Rule 8, M.R.App.P. (see Title 25, ch. 21).

Suretyship, Title 28, ch. 11, part 4.

Part 2
Method of Enforcement

Part Cross-References

Enforcement of court's order, 25-8-102.

Judgment for specific acts, Rule 70, M.R.Civ.P. (see Title 25, ch. 20).

25-13-201. Judgments for money or the possession of property. When the judgment is for money or the possession of real or personal property, the same may be enforced by a writ of execution; and if the judgment direct that the defendant be arrested, the execution may issue against the person of the judgment debtor after the return of an execution against his property unsatisfied in whole or in part.

History: En. Sec. 213, p. 177, L. 1867; re-en. Sec. 254, p. 81, Cod. Stat. 1871; en. Sec. 305, p. 120, L. 1877; re-en. Sec. 305, 1st Div. Rev. Stat. 1879; re-en. Sec. 316, 1st Div. Comp. Stat. 1887; re-en. Sec. 1214, C. Civ. Proc. 1895; re-en. Sec. 6817, Rev. C. 1907; re-en. Sec. 9420, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 684; re-en. Sec. 9420, R.C.M. 1935; R.C.M. 1947, 93-5805(part).

Cross-References

Execution against person of judgment debtor, 25-13-308.

Arrest and bail in civil actions, Title 27, ch. 16.

25-13-202. Judgments requiring the sale of property. When the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment or the material parts thereof and directing the proper officer to execute the judgment by making the sale and applying the proceeds in conformity therewith.

History: En. Sec. 213, p. 177, L. 1867; re-en. Sec. 254, p. 81, Cod. Stat. 1871; en. Sec. 305, p. 120, L. 1877; re-en. Sec. 305, 1st Div. Rev. Stat. 1879; re-en. Sec. 316, 1st Div. Comp. Stat. 1887; re-en. Sec. 1214, C. Civ. Proc. 1895; re-en. Sec. 6817, Rev. C. 1907; re-en. Sec. 9420, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 684; re-en. Sec. 9420, R.C.M. 1935; R.C.M. 1947, 93-5805(part).

25-13-203. Judgments requiring the performance of specific acts. (1) When the judgment requires the performance of any other act than those designated in 25-13-201 and 25-13-202, a certified copy of the judgment may be served upon the party against whom the same is rendered or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

(2) Where a judgment directs a party to make a deposit or delivery or to convey real property, if the direction is disobeyed, the court, besides punishing the disobedience as a contempt, may by order require the sheriff or levying officer, who may be a registered process server, to take and deposit or deliver the money or other personal property or to convey the real property in conformity with the direction of the court.

History: (1)En. Sec. 213, p. 177, L. 1867; re-en. Sec. 254, p. 81, Cod. Stat. 1871; en. Sec. 305, p. 120, L. 1877; re-en. Sec. 305, 1st Div. Rev. Stat. 1879; re-en. Sec. 316, 1st Div. Comp. Stat. 1887; re-en. Sec. 1214, C. Civ. Proc. 1895; re-en. Sec. 6817, Rev. C. 1907; re-en. Sec. 9420, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 684; re-en. Sec. 9420, R.C.M. 1935; Sec. 93-5805, R.C.M. 1947; (2)En. Sec. 229, P. 95, L. 1877; re-en. Sec. 229, 1st Div. Rev. Stat. 1879; re-en. Sec. 237, 1st Div. Comp. Stat. 1887; amd. Sec. 972, C. Civ. Proc. 1895; re-en. Sec. 6707, Rev. C. 1907; re-en. Sec. 9310, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 574; re-en. Sec. 9310, R.C.M. 1935; Sec. 93-4504, R.C.M. 1947; R.C.M. 1947, 93-4504(part), 93-5805(part); amd. Sec. 17, Ch. 548, L. 1987.

Cross-References

Contempts, Title 3, ch. 1, part 5.

25-13-204. Enforcement of order to pay money. Whenever an order for the payment of a sum of money is made by a court or judge pursuant to the provisions of this code, it may be enforced by execution in the same manner as if it were a judgment.

History: En. Sec. 473, p. 166, L. 1877; re-en. Sec. 473, 1st Div. Rev. Stat. 1879; re-en. Sec. 486, 1st Div. Comp. Stat. 1887; re-en. Sec. 1825, C. Civ. Proc. 1895; re-en. Sec. 7144, Rev. C. 1907; re-en. Sec. 9777, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1007; re-en. Sec. 9777, R.C.M. 1935; R.C.M. 1947, 93-5806.

Cross-References

Enforcement of judgment or order to pay child support, 40-6-117.

25-13-205. Judgments against county or county officer. When a judgment is rendered against the county or against any county officer in an action prosecuted against him in his name of office, when the same is to be paid by the county, no execution must issue upon the judgment, but the same must be paid as other county charges. When so collected, the same must be paid by the county treasurer to the proper person to whom the same is adjudged, upon the delivery of a proper voucher therefor.

History: En. Sec. 342, 5th Div. Rev. Stat. 1879; re-en. Sec. 751, 5th Div. Comp. Stat. 1887; amd. Sec. 4199, Pol. C. 1895; re-en. Sec. 2879, Rev. C. 1907; re-en. Sec. 4450, R.C.M. 1921; re-en. Sec. 4450, R.C.M. 1935; R.C.M. 1947, 16-811.

Cross-References

Payment of judgments against governmental entities, 2-9-316.

Garnishment of public officers, 25-13-504.

Governmental property exempt from execution, 25-13-613.

Collection of judgment against county or county officer, 25-31-1111.

Part 3
Contents of Writ

25-13-301. Form and contents of writ. (1) The writ of execution must:

(a) be issued in the name of the state of Montana, sealed with the seal of the court, and subscribed by the clerk;

(b) be directed to the sheriff or levying officer;

(c) intelligibly refer to the judgment, stating the court and the county where it was entered and, if it is for money, the amount thereof and the amount actually due thereon; and

(d) require the sheriff or levying officer to act substantially as provided in this part.

(2) In executions, the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions of a cent.

History: (1)En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; Sec. 93-5802, R.C.M. 1947; (2)En. Sec. 3152, Pol. C. 1895; re-en. Sec. 2035, Rev. C. 1907; re-en. Sec. 4285, R.C.M. 1921; Cal. Pol. C. Sec. 3274; re-en. Sec. 4285, R.C.M. 1935; Sec. 93-4710, R.C.M. 1947; R.C.M. 1947, 93-4710(part), 93-5802(part); amd. Sec. 105, Ch. 575, L. 1981; amd. Sec. 18, Ch. 548, L. 1987.

Cross-References

Liability of Sheriff for failure to execute writ, 7-32-2131.

Money of account, Title 30, ch. 12, part 6.

25-13-302. Execution against principal debtor before surety. Upon the rendition of any judgment, if it shall be shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors and others of the said defendants are sureties of such principal debtor, the court may order the judgment so to state, and upon the issuance of an execution upon such judgment, it shall direct the sheriff or levying officer to make the amount due thereon out of the goods and chattels, lands and tenements of the principal debtor or debtors or, if sufficient thereof cannot be found within his county to satisfy the same, to levy and make the same out of the property, personal or real, of the judgment debtor who was surety.

History: En. Sec. 118, p. 67, Bannack Stat.; re-en. Sec. 145, p. 161, L. 1867; re-en. Sec. 181, p. 62, Cod. Stat. 1871; re-en. Sec. 231, p. 95, L. 1877; re-en. Sec. 231, 1st. Div. Rev. Stat. 1879; re-en. Sec. 239, 1st Div. Comp. Stat. 1887; re-en. Sec. 1001, C. Civ. Proc. 1895; re-en. Sec. 6711, Rev. C. 1907; re-en. Sec. 9314, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 578; re-en. Sec. 9314, R.C.M. 1935; R.C.M. 1947, 93-4702(part); amd. Sec. 19, Ch. 548, L. 1987.

Cross-References

Designation in judgment of principal debtors and sureties, 25-9-202.

Suretyship, Title 28, ch. 11, part 4.

25-13-303. Execution when only some of defendants served. When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons or did not appear, it must direct the sheriff or levying officer to satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served or who appeared in the action.

History: En. Sec. 185, p. 80, Bannack Stat.; amd. Sec. 211, p. 177, L. 1867; re-en. Sec. 252, p. 81, Cod. Stat. 1871; re-en. Sec. 303, p. 119, L. 1877; re-en. Sec. 303, 1st Div. Rev. Stat. 1879; re-en. Sec. 314, 1st Div. Comp. Stat. 1887; re-en. Sec. 1212, C. Civ. Proc. 1895; re-en. Sec. 6815, Rev. C. 1907; re-en. Sec. 9418, R.C.M. 1921; re-en. Sec. 9418, R.C.M. 1935; R.C.M. 1947, 93-5803; amd. Sec. 20, Ch. 548, L. 1987.

Cross-References

Summoning joint debtor not originally served, 25-15-101.

Procedure when only part of defendants are served, Rule 4D(10), M.R.Civ.P. (see Title 25, ch. 20).

Multiple defendants jointly and severally liable, 27-1-703.

25-13-304. Execution against property of judgment debtor. If the writ be against the property of the judgment debtor, it shall require the sheriff or levying officer to satisfy the judgment, with interest, out of the personal property of such debtor and, if sufficient personal property cannot be found, out of his real property as provided in 25-13-305.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(part); amd. Sec. 106, Ch. 575, L. 1981; amd. Sec. 21, Ch. 548, L. 1987.

Cross-References

Clerk to include interest in judgment, 25-9-204.

Amount of interest, 25-9-205.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

25-13-305. Execution of lien on real property. If the judgment be a lien upon real property, the writ shall require the sheriff or levying officer to satisfy the judgment, with interest, out of the real property belonging to the judgment debtor on the day when the judgment was docketed or at any time thereafter or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the clerk of the district court of such county, stating such day, or any time thereafter.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(part); amd. Sec. 22, Ch. 548, L. 1987.

Cross-References

Clerk to include interest in judgment, 25-9-204.

Amount of interest, 25-9-205.

Docketing of judgment — lien, 25-9-301.

Judgment lien, 71-3-1504.

25-13-306. Execution against property in hands of representative. If the writ be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff or levying officer to satisfy the judgment, with interest, out of such property.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(2); amd. Sec. 23, Ch. 548, L. 1987.

Cross-References

Clerk to include interest in judgment, 25-9-204.

Amount of interest, 25-9-205.

Right to bring action or assert defense, Title 27, ch. 1, part 5.

25-13-307. Execution requiring delivery of possession of property. If the writ be for the delivery of the possession of real or personal property, it must require the sheriff or levying officer to deliver the possession of the same, particularly describing it, to the party entitled thereto and may at any time require the sheriff or levying officer to satisfy any costs, damages, rents, or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, the value of the property for which the judgment was rendered to be specified therein, if a delivery cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in 25-13-305.

History: **En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(4); amd. Sec. 24, Ch. 548, L. 1987.**

Cross-References

Judgments for money or the possession of property, 25-13-201.

25-13-308. Execution against person of judgment debtor. If the writ be against the person of the judgment debtor, it must require the sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged, according to law.

History: **En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(3).**

Cross-References

Clerk to include interest in judgment, 25-9-204.

Amount of interest, 25-9-205.

Judgments for money or the possession of property, 25-13-201.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

Effect of discharge, 25-14-309.

Discharge at instance of plaintiff, 25-14-311.

Discharge upon failure of plaintiff to advance money for support of prisoner, 25-14-312.

Arrest and bail in civil actions, Title 27, ch. 16.

Part 4

Execution and Return of Writ

Part Cross-References

Proceedings in aid of execution, Title 25, ch. 14.

Execution, Rule 69, M.R.Civ.P. (see Title 25, ch. 20).

25-13-401. To whom execution issued. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff or levying officer of any county in the state. Where it requires the delivery of real or personal property, it must be issued to the sheriff or levying officer of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties.

History: **En. Sec. 216, p. 178, L. 1867; re-en. Sec. 257, p. 82, Cod. Stat. 1871; re-en. Sec. 307, p. 120, L. 1877; re-en. Sec. 307, 1st Div. Rev. Stat. 1879; re-en. Sec. 318, 1st Div. Comp. Stat. 1887; re-en. Sec. 1217, C. Civ. Proc. 1895; re-en. Sec. 6820, Rev. C. 1907; re-en. Sec. 9423, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 687; re-en. Sec. 9423, R.C.M. 1935; R.C.M. 1947, 93-5809; amd. Sec. 25, Ch. 548, L. 1987.**

25-13-402. How writ executed. The sheriff or levying officer must execute the writ against the property of the judgment debtor no later than 60 days after receipt of the writ by levying on a sufficient amount of property, if there be sufficient, collecting or selling the things in action, and selling the other property and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff or levying officer, he must levy only on such part of the property as the judgment debtor may indicate if the property indicated be amply sufficient to satisfy the judgment and costs.

History: En. Sec. 198, p. 83, Bannack Stat.; re-en. Sec. 220, p. 180, L. 1867; re-en. Sec. 270, p. 85, Cod. Stat. 1871; amd. Sec. 320, p. 125, L. 1877; re-en. Sec. 320, 1st Div. Rev. Stat. 1879; re-en. Sec. 331, 1st Div. Comp. Stat. 1887; re-en. Sec. 1224, C. Civ. Proc. 1895; re-en. Sec. 6827, Rev. C. 1907; re-en. Sec. 9431, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 691; re-en. Sec. 9431, R.C.M. 1935; R.C.M. 1947, 93-5823; amd. Sec. 3, Ch. 88, L. 1987; amd. Sec. 26, Ch. 548, L. 1987.

Cross-References

Liability of Sheriff for failure to execute writ, 7-32-2131.

Conduct of sale, 25-13-704.

25-13-403. Security for costs when property seized. If the sheriff or levying officer will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of execution shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

History: En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; R.C.M. 1947, 16-2714(part); amd. Sec. 27, Ch. 548, L. 1987.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Order to apply property to satisfaction of judgment, 25-14-107.

25-13-404. Return of the execution. (1) Except as provided in subsections (2) and (3), execution may be made returnable to the clerk of the court in which the judgment was rendered, at any time not less than 10 or more than 60 days after receipt of the recovery by the sheriff or levying officer following imposition of levy, as provided in 25-13-402.

(2) The writ of execution issued by the county treasurer under 15-16-401 may be made returnable, at any time not less than 10 or more than 90 days after its receipt by the sheriff or levying officer, to the county treasurer of the county in which the writ was issued.

(3) In compliance with the provisions of subsection (1) and in lieu of returning the writ of execution to the clerk of the court, the sheriff may enclose his return of the writ in an envelope to the officer, agent, or attorney who sent it and deposit it in the post office, prepaying the postage.

History: En. Sec. 212, p. 177, L. 1867; re-en. Sec. 253, p. 81, Cod. Stat. 1871; amd. Sec. 20, p. 57, L. 1874; re-en. Sec. 304, p. 119, L. 1877; re-en. Sec. 304, 1st Div. Rev. Stat. 1879; re-en. Sec. 315, 1st Div. Comp. Stat. 1887; re-en. Sec. 1213, C. Civ. Proc. 1895; re-en. Sec. 6816, Rev. C. 1907; re-en. Sec. 9419, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 683; re-en. Sec. 9419, R.C.M. 1935; R.C.M. 1947, 93-5804(part); amd. Sec. 107, Ch. 575, L. 1981; amd. Sec. 1, Ch. 91, L. 1983; amd. Sec. 4, Ch. 88, L. 1987; amd. Sec. 28, Ch. 548, L. 1987.

Cross-References

Debtor to answer concerning his property when execution unsatisfied, 25-14-101.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

25-13-405. Clerk to record returned execution when levy on real property. If any real estate be levied upon, the clerk must record the execution and the return thereto at large and certify the same under his hand as true copies in a book to be called the "execution book", which must be indexed, with the names of the plaintiffs and defendants in execution alphabetically arranged, and kept open at all times during office hours for the inspection of the public, without charge. It is evidence of the contents of the originals whenever they or any part thereof may be destroyed or mutilated.

History: En. Sec. 212, p. 177, L. 1867; re-en. Sec. 253, p. 81, Cod. Stat. 1871; amd. Sec. 20, p. 57, L. 1874; re-en. Sec. 304, p. 119, L. 1877; re-en. Sec. 304, 1st Div. Rev. Stat. 1879; re-en. Sec. 315, 1st Div. Comp. Stat. 1887; re-en. Sec. 1213, C. Civ. Proc. 1895; re-en. Sec. 6816, Rev. C. 1907; re-en. Sec. 9419, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 683; re-en. Sec. 9419, R.C.M. 1935; R.C.M. 1947, 93-5804(part).

Cross-References

Debtor to answer concerning his property when execution unsatisfied, 25-14-101.

25-13-406 through 25-13-410 reserved.

25-13-411. Repealed. Sec. 3, Ch. 301, L. 1989.

History: En. Sec. 2, Ch. 538, L. 1985.

Part 5

Property Subject to Execution

Part Cross-References

What property subject to attachment, 27-18-102.

Execution against trespassing animals, 81-4-307.

Sale of unlawfully driven animals in manner as execution, 81-5-110.

Sale of livestock under supplementary Writ of Execution, 81-8-315.

25-13-501. What property subject to execution. All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action are liable to execution. Shares and interest in any corporation or company, debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery may be attached on execution, in like manner as upon writs of attachment. Gold dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, property is not affected by the execution.

History: En. Sec. 192, p. 81, Bannack Stat.; amd. Sec. 217, p. 178, L. 1867; re-en. Sec. 258, p. 82, Cod. Stat. 1871; re-en. Sec. 308, p. 121, L. 1877; re-en. Sec. 308, 1st Div. Rev. Stat. 1879; re-en. Sec. 319, 1st Div. Comp. Stat. 1887; re-en. Sec. 1218, C. Civ. Proc. 1895; re-en. Sec. 6821, Rev. C. 1907; re-en. Sec. 9424, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 688; re-en. Sec. 9424, R.C.M. 1935; R.C.M. 1947, 93-5810.

Cross-References

Return of damaged property to officer for sale, 27-17-404.

What property subject to attachment, 27-18-102.

25-13-502. Debts owed to judgment debtor. After the issuing of an execution against property and before its return, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt or so much thereof as may be necessary to satisfy the execution; and the sheriff's receipt is sufficient discharge for the amount so paid.

History: En. Sec. 217, p. 88, Bannack Stat.; re-en. Sec. 240, p. 184, L. 1867; re-en. Sec. 289, Cod. Stat. 1871; re-en. Sec. 340, p. 134, L. 1877; re-en. Sec. 340, 1st Div. Rev. Stat. 1879; re-en. Sec. 352, 1st Div. Comp. Stat. 1887; re-en. Sec. 1262, C. Civ. Proc. 1895; re-en. Sec. 6850, Rev. C. 1907; re-en. Sec. 9456, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 716; re-en. Sec. 9456, R.C.M. 1935; R.C.M. 1947, 93-5903.

Cross-References

Debtors of judgment debtor and those holding property to answer, 25-14-103.

Order to apply property to satisfaction of judgment, 25-14-107.

Enforcement of execution on Justice's Court order, Rule 23, M.J.C.C.R.Civ.P. (see Title 25, ch. 23).

25-13-503. Property claimed by third persons. If personal property levied upon be claimed by a third person, the same proceedings shall be had as provided in attachment in 27-18-602.

History: En. Sec. 1220, C. Civ. Proc. 1895; re-en. Sec. 6823, Rev. C. 1907; re-en. Sec. 9426, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 689; re-en. Sec. 9426, R.C.M. 1935; R.C.M. 1947, 93-5812.

Cross-References

Debtors of judgment debtor and those holding property to answer, 25-14-103.

Procedure when debt to or ownership of judgment debtor denied, 25-14-104.

Order to apply property to satisfaction of judgment, 25-14-107.

25-13-504. Garnishment of public officers. The provisions of 27-18-406, relating to the garnishment of public officers, apply to the levy of an execution.

History: En. Sec. 1243, C. Civ. Proc. 1895; re-en. Sec. 6846, Rev. C. 1907; re-en. Sec. 9452, R.C.M. 1921; re-en. Sec. 9452, R.C.M. 1935; R.C.M. 1947, 93-5844.

Cross-References

Money, credits, or other property in control of public officer or board, 27-18-406.

25-13-505. Personal property subject to a security interest. Personal property subject to a security interest may be taken on execution issued at the suit of a creditor of the debtor under the security agreement; but before the property is so taken, the officer levying the writ must pay or tender to the secured party the amount of the security agreement debt and interest or must deposit the same with the county treasurer of the county in which the financing statement covering the security agreement is filed, if such statement is filed with a county clerk and recorder, or if such statement is filed with another filing officer pursuant to law, then with such other filing officer, payable to the order of the secured party.

History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).

Cross-References

Property subject to security interest — disposition of proceeds, security agreement, 25-13-712.

Secured transactions, Title 30, ch. 9.

25-13-506. Duty of secured party. (1) The secured party under any security agreement of record shall, upon 15 days' notice in writing served upon him in person by any creditor of the debtor seeking to satisfy a judgment of such creditor against the debtor, be required to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed an affidavit showing the amount of the indebtedness then actually due and owing to the secured party; and such affidavit shall state the amount of the original obligation for which the security agreement was given as security, all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, all payments of whatsoever kind, whether on principal or interest, made by the debtor to the date of the execution of such affidavit by the secured party, and the balance then remaining due and unpaid to the secured party. If within 15 days from the service of any such demand in writing on the secured party by any creditor of the debtor, the secured party shall fail, refuse, or neglect to file the affidavit herein required, the security agreement shall be of no force or effect as against such creditor upon the seizure of any such personal property on execution.

(2) In the event the amount shown to be due is paid to the county treasurer or to a filing officer, as aforesaid, or to the secured party in satisfaction of the security agreement by any execution creditor against the debtor, the secured party shall be required to surrender to the county treasurer or such filing officer the security agreement and any note or other evidence of indebtedness secured thereby, which security agreement or other evidence of indebtedness shall be delivered by the secured party, county treasurer, or filing officer to the execution creditor.

History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).

Cross-References

Property subject to security interest — disposition of proceeds, security agreement, 25-13-712.

Secured transactions, Title 30, ch. 9.

Part 6
Property Exempt From Execution

Part Cross-References

Government property exempt from execution, 2-9-318.

PERS benefits exempt from execution, 19-2-1004.

Firefighters' retirement benefits exempt from execution, 19-18-612.

Police retirement benefits exempt from execution, 19-19-504.

Teachers' retirement benefits exempt from execution, 19-20-706.

Exempt property — bankruptcy proceedings, 31-2-106.

Exempt property not passed by general assignment, 31-2-227.

Cooperative share exempt from execution, 35-15-404.

Nonliability of members of rural cooperative utilities for debts of cooperative, 35-18-302.

Cemetery association property exempt from execution, 35-20-217.

Unemployment insurance benefits exempt from execution, 39-51-3105.

Workers' compensation benefits not liable for debts, 39-71-743.

Assistance not assignable or subject to legal process, 39-73-110.

Hail insurance benefits exempt from execution, 80-2-245.

25-13-601. Waiver of exemptions in unsecured note unenforceable. Any waiver of statutory exemption from execution in an unsecured promissory note shall be unenforceable.

History: En. Sec. 1, Ch. 172, L. 1965; R.C.M. 1947, 93-5813.1.

Cross-References

Uniform Commercial Code — commercial paper, Title 30, ch. 3.

25-13-602. Repealed. Sec. 6, Ch. 210, L. 1985.

History: En. Sec. 1, Ch. 120, L. 1933; re-en. Sec. 9430.1, R.C.M. 1935; R.C.M. 1947, 93-5819.

25-13-603 through 25-13-605 reserved.

25-13-606. Protection of property of residents. A resident of this state is entitled to the exemptions provided in this part.

History: En. Sec. 1, Ch. 302, L. 1987.

25-13-607. Claim enforceable against exempt property. Notwithstanding any other provision of this part, a creditor may levy against exempt property to enforce a claim for:

(1) the purchase price of the property; or

(2) a loan made for the express purpose of enabling the judgment debtor to purchase the property and used for that purpose.

History: En. Sec. 2, Ch. 302, L. 1987.

25-13-608. Property exempt without limitation — exceptions. (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans' benefits, except as provided in subsection (2);

(d) disability or illness benefits;

(e) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(f) maintenance and child support; and

(g) a burial plot for the judgment debtor and his family.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, as defined in 42 U.S.C. 662(f), are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse if the spouse or former spouse is the custodial parent of a child for whom child support is owed or owing and the judgment debtor is the parent of the child.

History: En. Sec. 3, Ch. 302, L. 1987; amd. Sec. 1, Ch. 240, L. 1989.

Cross-References

Assignment or attachment of workers' compensation payments, 39-71-743.

25-13-609. Personal property exempt subject to value limitations. A judgment debtor is entitled to exemption from execution of the following:

(1) the judgment debtor's interest, not to exceed $4,500 in aggregate value, to the extent of a value not exceeding $600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;

(2) the judgment debtor's interest, not to exceed $1,200 in value, in one motor vehicle;

(3) the judgment debtor's interest, not to exceed $3,000 in aggregate value, in any implements, professional books, and tools, of the trade of the judgment debtor or a dependent of the judgment debtor; and

(4) the judgment debtor's interest, not to exceed $4,000 in value, in any unmatured life insurance contracts owned by him.

History: En. Sec. 4, Ch. 302, L. 1987; amd. Sec. 1, Ch. 130, L. 1989.

25-13-610. Tracing exempt personal property. (1) If money or other property exempt under 25-13-608 and 25-13-609 has been sold or has been lost, damaged, or destroyed and the judgment debtor has been indemnified for it, he is entitled for 6 months to an exemption of proceeds that are traceable (for example, in a bank or savings account).

(2) Earnings exempt under 25-13-614 remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable (for example, in a bank or savings account).

(3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

History: En. Sec. 5, Ch. 302, L. 1987.

25-13-611. Repealed. Sec. 11, Ch. 302, L. 1987.

History: En. Sec. 1, Ch. 8, L. 1905; re-en. Sec. 6824, Rev. C. 1907; amd. Sec. 1, Ch. 232, L. 1921; re-en. Sec. 9427, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 690; re-en. Sec. 9427, R.C.M. 1935; R.C.M. 1947, 93-5813; amd. Sec. 1, Ch. 210, L. 1985.

25-13-612. Repealed. Sec. 11, Ch. 302, L. 1987.

History: Ap. p. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; Sec. 93-5814, R.C.M. 1947; Ap. p. Sec. 1, Ch. 127, L. 1937; re-en. Sec. 9428.1, R.C.M. 1935; Sec. 93-5815, R.C.M. 1947; R.C.M. 1947, 93-5814(part), 93-5815; amd. Sec. 2, Ch. 210, L. 1985.

25-13-613. Property necessary to carry out governmental functions. (1) In addition to the property mentioned in 25-13-609(1), there shall be exempt to all judgment debtors the following property:

(a) all fire engines, hooks, and ladders, with the cart, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any laws of this state;

(b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor;

(c) all courthouses, jails, public offices, and buildings, lots, grounds, and personal property, the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the courthouse, jail, and public offices belonging to any county of this state; and

(d) all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining owned or held by any town or incorporated city or dedicated by such city or town to health, ornament, or public use or for the use of any fire or military company organized under the laws of the state.

(2) No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon, and no person not a bona fide resident of this state shall have the benefit of these exemptions.

History: **En. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; R.C.M. 1947, 93-5814(part); amd. Sec. 3, Ch. 210, L. 1985; amd. Sec. 37, Ch. 83, L. 1989.**

Cross-References

Payment of judgments against the state, 2-9-315.

Payment of judgments against governmental entities, 2-9-316.

Attachment and execution against governmental entity, 2-9-318.

Payment of costs by governmental entities, Title 25, ch. 10, part 7.

Judgments against county or county officers, 25-13-205.

Garnishment of public officers, 25-13-504.

25-13-614. Earnings of judgment debtor. (1) Earnings of a judgment debtor that are not subject to garnishment as provided in this section are exempt.

(2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(a) the amount by which his disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or

(b) 25% of his disposable earnings for that week.

(3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.

(4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:

(i) 50% of the judgment debtor's disposable earnings for that week if he is supporting his spouse or dependent child (other than a spouse or child for whom the order is issued); or

(ii) 60% of the judgment debtor's disposable earnings for that week if he is not supporting a spouse or dependent child described in subsection (4)(a)(i).

(b) However, the amount stated in (4)(a)(i) may be 55% and the amount stated in (4)(a)(ii) may be 65% if such earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of such workweek.

(5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 U.S.C. 1672.

History: **En. Sec. 1222, C. Civ. Proc. 1895; re-en. Sec. 6825, Rev. C. 1907; amd. Sec. 1, Ch. 48, L. 1913; re-en. Sec. 9429, R.C.M. 1921; amd. Sec. 1, Ch. 3, L. 1933; re-en. Sec. 9429, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1939; R.C.M. 1947, 93-5816; amd. Sec. 7, Ch. 370, L. 1981; amd. Sec. 1, Ch. 153, L. 1983; amd. Sec. 1, Ch. 538, L. 1985; amd. Sec. 7, Ch. 302, L. 1987; amd. Sec. 2, Ch. 301, L. 1989.**

Cross-References

Offset of tax refunds or other funds due taxpayer to pay for delinquent taxes — certain wages exempt, 15-30-310.

25-13-615. Homestead. The homestead of a judgment debtor exempt from execution is provided for in Title 70, chapter 32.

History: En. Sec. 1223, C. Civ. Proc. 1895; re-en. Sec. 6826, Rev. C. 1907; re-en. Sec. 9430, R.C.M. 1921; re-en. Sec. 9430, R.C.M. 1935; R.C.M. 1947, 93-5818.

25-13-616. Repealed. Sec. 11, Ch. 302, L. 1987.

History: En. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; R.C.M. 1947, 93-5814(part); amd. Sec. 4, Ch. 210, L. 1985.

25-13-617. Repealed. Sec. 11, Ch. 302, L. 1987.

History: En. Sec. 2, Ch. 120, L. 1933; re-en. Sec. 9430.2, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1941; R.C.M. 1947, 93-5820; amd. Sec. 8, Ch. 370, L. 1981; amd. Sec. 5, Ch. 210, L. 1985.

Part 7

Sale on Execution

Part Cross-References

Return of damaged property for sale by officer, 27-17-404.

Sale of attached property, Title 27, ch. 18, part 8.

Warranty upon judicial sale, 30-11-222.

Sale of abandoned vehicles in manner of sale on execution, 61-12-404.

25-13-701. Notice of sale on execution. (1) Before the sale of the property on execution, notice thereof must be given as follows:

(a) in case of perishable property, by posting written notice of the time and place of the sale in three public places in the county where the sale is to take place, for such time as may be reasonable considering the character and condition of the property;

(b) in case of other personal property, by posting a similar notice in three public places in the county where the sale is to take place, for not less than 5 days or more than 10 days, and by publishing a copy of the notice at least 1 week before the sale in a newspaper of general circulation published in the county, if there be one;

(c) in case of real property, by posting a similar notice, particularly describing the property, for 20 days in three public places in the county where the property is situated and also where the property is to be sold, which may be either at the courthouse or on the premises, and publishing a copy thereof once a week for the same period in some newspaper published in the county, if there be one, which notice shall be substantially as follows:

SHERIFF'S SALE

............, Plaintiff,
vs.
............, Defendant,

To be sold at sheriff's sale on the .... day of ...., 19.., at .... (Here insert brief description of property.)

Signed ...., Sheriff

(2) Any sheriff publishing a notice not in accordance with the form set forth in subsection (1)(c) and which shall cost more than such a notice shall not be entitled to any costs for publication of the same but shall be personally liable for the payment of such publication.

History: En. Sec. 199, p. 83, Bannack Stat.; amd. Sec. 221, p. 180, L. 1867; re-en. Sec. 271, p. 86, Cod. Stat. 1871; amd. Sec. 20, p. 57, L. 1874; re-en. Sec. 321, p. 126, L. 1877; re-en. Sec. 321, 1st Div. Rev. Stat. 1879; re-en. Sec. 332, 1st Div. Comp. Stat. 1887; amd. Sec. 1225, C. Civ. Proc. 1895; re-en. Sec. 6828, Rev. C. 1907; re-en. Sec. 9432, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 692; re-en. Sec. 9432, R.C.M. 1935; R.C.M. 1947, 93-5824; amd. Sec. 1, Ch. 235, L. 1985; amd. Sec. 5, Ch. 88, L. 1987.

Cross-References

County printing, Title 7, ch. 5, part 24.

Publication of legal notices, Title 18, ch. 7, part 2.

Disposal of foreclosed agricultural land, Title 25, ch. 13, part 9.

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

Sale of property to satisfy agisters' liens and liens for service, 71-3-1203.

25-13-702. Penalty for selling without notice or destruction of notice. An officer selling without the notice prescribed by 25-13-701 forfeits $500 to the aggrieved party in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or satisfaction of the judgment (if the judgment be satisfied before sale), forfeits $500.

History: En. Sec. 200, p. 84, Bannack Stat.; re-en. Sec. 222, p. 180, L. 1867; re-en. Sec. 272, p. 86, Cod. Stat. 1871; re-en. Sec. 322, p. 127, L. 1877; re-en. Sec. 322, 1st Div. Rev. Stat. 1879; re-en. Sec. 333, 1st Div. Comp. Stat. 1887; re-en. Sec. 1226, C. Civ. Proc. Sec. 1895; re-en. Sec. 6829, Rev. C. 1907; re-en. Sec. 9433, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 693; re-en. Sec. 9433, R.C.M. 1935; R.C.M. 1947, 93-5825.

Cross-References

Damages, Title 27, ch. 1, part 2.

25-13-703. Postponement of sale. Good cause therefor appearing, the officer holding the execution may postpone any sale noticed thereunder for a period not exceeding 15 days, by public proclamation at the time and place fixed in the notice of sale and by posting a notice in three public places in the township where the property has previously been noticed to be sold.

History: En. Sec. 1, Ch. 120, L. 1915; re-en. Sec. 9435, R.C.M. 1921; re-en. Sec. 9435, R.C.M. 1935; R.C.M. 1947, 93-5827.

25-13-704. Conduct of sale. (1) All sales of property under execution must be made at auction to the highest bidder, between the hours of 9 a.m. and 5 p.m. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser or be interested in any purchase at such sale.

(2) When the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property consisting of several known lots or parcels, they must be sold separately, or when a portion of such real property is claimed by a third person and he requires it to be sold separately, such portion must be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold when such property consists of several known lots or parcels or of articles which can be sold to advantage separately, and the sheriff must follow such directions.

History: En. Sec. 201, p. 84, Bannack Stat.; amd. Sec. 223, p. 180, L. 1867; re-en. Sec. 273, p. 86, Cod. Stat. 1871; re-en. Sec. 323, p. 127, L. 1877; re-en. Sec. 323, 1st Div. Rev. Stat. 1879; re-en. Sec. 334, 1st Div. Comp. Stat. 1887; re-en. Sec. 1227, C. Civ. Proc. 1895; re-en. Sec. 6830, Rev. C. 1907; re-en. Sec. 9434, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 694; re-en. Sec. 9434, R.C.M. 1935; R.C.M. 1947, 93-5826.

Cross-References

Execution against property of judgment debtor, 25-13-304.

How writ executed, 25-13-402.

25-13-705. Procedure when purchaser refuses to pay. If a purchaser refuses to pay the amount bid by him for the property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction, and the person refusing to pay the costs which have accrued by reason of his bid shall be deemed guilty of contempt of court and punished accordingly.

History: En. Sec. 202, p. 85, Bannack Stat.; amd. Sec. 224, p. 181, L. 1867; re-en. Sec. 274, p. 86, Cod. Stat. 1871; amd. Sec. 324, p. 127, L. 1877; re-en. Sec. 324, 1st Div. Rev. Stat. 1879; re-en. Sec. 335, 1st Div. Comp. Stat. 1887; en. Sec. 1228, C. Civ. Proc. 1895; re-en. Sec. 6831, Rev. C. 1907; re-en. Sec. 9436, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 695; re-en. Sec. 9436, R.C.M. 1935; R.C.M. 1947, 93-5828.

Cross-References

Contempts, Title 3, ch. 1, part 5.

25-13-706. Rejection of subsequent bids after refusal to pay. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such purchaser.

History: En. Sec. 325, p. 128, L. 1877; re-en. Sec. 325, 1st Div. Rev. Stat. 1879; re-en. Sec. 336, 1st Div. Comp. Stat. 1887; re-en. Sec. 1229, C. Civ. Proc. 1895; re-en. Sec. 6832, Rev. C. 1907; re-en. Sec. 9437, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 696; re-en. Sec. 9437, R.C.M. 1935; R.C.M. 1947, 93-5829.

25-13-707. Liability of officer after resale. Sections 25-13-705 and 25-13-706 must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser refusing to pay.

History: En. Sec. 326, p. 128, L. 1877; re-en. Sec. 326, 1st Div. Rev. Stat. 1879; re-en. Sec. 337, 1st Div. Comp. Stat. 1887; re-en. Sec. 1230, C. Civ. Proc. 1895; re-en. Sec. 6833, Rev. C. 1907; re-en. Sec. 9438, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 697; re-en. Sec. 9438, R.C.M. 1935; R.C.M. 1947, 93-5830.

Cross-References

Judgments against county or county officers, 25-13-205.

25-13-708. Conveyance of personal property capable of manual delivery. When the purchaser of any personal property capable of manual delivery pays the purchase money, the officer making the sale must deliver to the purchaser the property and, if desired, execute and deliver to him a certificate of the sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

History: En. Sec. 205, p. 85, Bannack Stat.; re-en. Sec. 227, p. 181, L. 1867; re-en. Sec. 277, p. 87, Cod. Stat. 1871; re-en. Sec. 327, p. 128, L. 1877; re-en. Sec. 327, 1st Div. Rev. Stat. 1879; re-en. Sec. 338, 1st Div. Comp. Stat. 1887; amd. Sec. 1231, C. Civ. Proc. 1895;

re-en. Sec. 6834, Rev. C. 1907; re-en. Sec. 9439, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 698; re-en. Sec. 9439, R.C.M. 1935; R.C.M. 1947, 93-5831.

25-13-709. Conveyance of personal property not capable of manual delivery. When the purchaser of any personal property not capable of manual delivery pays the purchase money, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

History: En. Sec. 228, p. 181, L. 1867; re-en. Sec. 278, p. 87, Cod. Stat. 1871; re-en. Sec. 328, p. 128, L. 1877; re-en. Sec. 328, 1st Div. Rev. Stat. 1879; re-en. Sec. 339, 1st Div. Comp. Stat. 1887; amd. Sec. 1232, C. Civ. Proc. 1895; re-en. Sec. 6835, Rev. C. 1907; re-en. Sec. 9440, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 699; re-en. Sec. 9440, R.C.M. 1935; R.C.M. 1947, 93-5832.

25-13-710. Real property — what interest transferred. Upon a sale of real property, the purchaser is substituted to and acquires the right, title, interest, and claim of the judgment debtor thereto; and when the estate is less than a leasehold of 2 years' unexpired term, the sale is absolute. In all other cases, the property is subject to redemption, as provided in part 8 of this chapter.

History: En. Sec. 229, p. 181, L. 1867; re-en. Sec. 279, p. 87, Cod. Stat. 1871; re-en. Sec. 329, p. 128, L. 1877; re-en. Sec. 329, 1st Div. Rev. Stat. 1879; re-en. Sec. 340, 1st Div. Comp. Stat. 1887; re-en. Sec. 1233, C. Civ. Proc. 1895; re-en. Sec. 6836, Rev. C. 1907; re-en. Sec. 9441, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 700; re-en. Sec. 9441, R.C.M. 1935; R.C.M. 1947, 93-5833(part).

25-13-711. Real property — certificate of sale. (1) Upon a sale of real property, the officer must give to the purchaser a certificate of sale, containing:

(a) a particular description of the property sold;
(b) the price bid for each distinct lot or parcel;
(c) the whole price paid;
(d) when subject to redemption, a statement to that effect.

(2) A duplicate of such certificate must be filed by the officer in the office of the county clerk.

History: En. Sec. 229, p. 181, L. 1867; re-en. Sec. 279, p. 87, Cod. Stat. 1871; re-en. Sec. 329, p. 128, L. 1877; re-en. Sec. 329, 1st Div. Rev. Stat. 1879; re-en. Sec. 340, 1st Div. Comp. Stat. 1887; re-en. Sec. 1233, C. Civ. Proc. 1895; re-en. Sec. 6836, Rev. C. 1907; re-en. Sec. 9441, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 700; re-en. Sec. 9441, R.C.M. 1935; R.C.M. 1947, 93-5833(part).

25-13-712. Property subject to a security interest — disposition of proceeds, security agreement. (1) When the property taken under 25-13-505 is sold under process, the officer levying the writ must apply the proceeds of the sale as follows:

(a) to the repayment of the sum paid to the secured party, with interest from the date of such payment; and

(b) the balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

(2) In the event the property is sold under execution, such creditor shall be required to deliver to the debtor the security agreement and any note or other evidence of indebtedness secured thereby obtained from the secured

party when the property is sold for the amount of the indebtedness under the security agreement or an amount in excess thereof.

History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).

Cross-References

Execution upon property subject to security interest, 25-13-505, 25-13-506.

Secured transactions, Title 30, ch. 9.

25-13-713. Procedure when sale invalidated, revival of judgment. (1) If the purchaser of real property sold on execution or his successor in interest be evicted therefrom in consequence of irregularities in the proceedings concerning the sale or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor.

(2) If the purchaser of property at sheriff's sale or his successor in interest fail to recover possession in consequence of irregularity in the proceedings concerning the sale or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore. When so revived, the said judgment shall have the same effect as an original judgment of the said court of that date, bearing interest as aforesaid; and any other or after-acquired property, rents, issues, or profits of the said debtor shall be liable to levy and sale under execution in satisfaction of such debt, but no property of such debtor sold bona fide before the filing of such petition shall be subject to the lien of said judgment. The notice of the filing of such petition shall be made by filing a notice thereof in the office of the county clerk where such property may be situated, and said judgment shall be revived in the name of the original plaintiff or plaintiffs for the use of said petitioner, the party in interest.

History: En. Sec. 237, p. 183, L. 1867; re-en. Sec. 286, p. 89, Cod. Stat. 1871; re-en. Sec. 336, p. 132, L. 1877; re-en. Sec. 336, 1st Div. Rev. Stat. 1879; re-en. Sec. 347, 1st Div. Comp. Stat. 1887; re-en. Sec. 1241, C. Civ. Proc. 1895; re-en. Sec. 6844, Rev. C. 1907; re-en. Sec. 9450, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 708; re-en. Sec. 9450, R.C.M. 1935; R.C.M. 1947, 93-5842.

25-13-714. Validation of defective judicial sales. All judicial sales of real property prior to January 1, 1973, provided no action is pending on July 1, 1973, to set such sale aside, where made in this state on proceedings to satisfy valid judgments or decrees of any court and the moneys bidden thereon paid to the officer making such sale, shall be valid and sufficient in law to sustain a sheriff's deed based on such sale and, when no such deed has been executed, shall entitle such purchaser to such deed; and such deed, if now or when executed, shall be sufficient to convey all the title of the judgment debtor at the time of such sale in the premises so sold to the purchaser at said sale, and all defects or irregularities in the issuance of execution, the manner of making or conducting the sale, or the recitals or references in such deed shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 80, L. 1973; R.C.M. 1947, 93-5846.

Part 8

Redemption of Real Property

Part Cross-References

Docketing of judgment — lien, 25-9-301.

Rights of redemption applicable, 71-1-228.

Action to redeem mortgage, 71-1-230.

Redemption by multiple mortgagors, 71-1-231.

Liens generally, Title 71, ch. 3.

25-13-801. Who may redeem. (1) Property sold subject to redemption, as provided by 25-13-710, or any part sold separately may be redeemed in the manner hereinafter provided by the following persons or their successors in interest:

(a) the judgment debtor, the judgment debtor's spouse, or his successor in interest in the whole or any part of the property and, if the judgment debtor or successor be a corporation, a stockholder thereof;

(b) a creditor having a lien by judgment, mortgage, or attachment on the property sold or on some share or part thereof subsequent to that on which the property is sold. If a corporation be such creditor, then any stockholder thereof may redeem.

(2) The persons mentioned in subsection (1)(b) of this section are, in this part, termed "redemptioners".

History: En. Sec. 230, p. 181, L. 1867; re-en. Sec. 280, p. 87, Cod. Stat. 1871; re-en. Sec. 330, p. 129, L. 1877; re-en. Sec. 330, 1st Div. Rev. Stat. 1879; re-en. Sec. 341, 1st Div. Comp. Stat. 1887; amd. Sec. 1234, C. Civ. Proc. 1895; re-en. Sec. 6837, Rev. C. 1907; amd. Sec. 1, Ch. 107, L. 1913; re-en. Sec. 9442, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 701; amd. Sec. 1, Ch. 16, L. 1927; re-en. Sec. 9442, R.C.M. 1935; amd. Sec. 55, Ch. 535, L. 1975; R.C.M. 1947, 93-5834.

Cross-References

Docketing of judgment — lien, 25-9-301.

Disposal of foreclosed agricultural land, Title 25, ch. 13, part 9.

Prejudgment attachment, Title 27, ch. 18.

25-13-802. Time for redemption — amount to be paid. The judgment debtor or redemptioner may redeem the property from the purchaser any time within 1 year after the sale on paying the purchaser:

(1) the amount of his purchase with interest at a rate established by the judgment in the action that led to the execution sale, up to the time of redemption;

(2) the amount of any assessment or taxes which the purchaser may have paid thereon after purchase and interest on such amount;

(3) the amount of any repairs, maintenance expenses, or other expenditures that the purchaser may reasonably have made after purchase for the maintenance of the property, with interest on the amounts from the date of expenditure; and

(4) if the purchaser is also a creditor having a prior lien to that of the redemptioner other than the judgment under which such purchase was made, the amount of such lien with interest.

History: En. Sec. 231, p. 181, L. 1867; re-en. Sec. 281, p. 88, Cod. Stat. 1871; amd. Sec. 331, p. 129, L. 1877; re-en. Sec. 331, 1st Div. Rev. Stat. 1879; re-en. Sec. 342, 1st Div. Comp. Stat. 1887; amd. Sec. 1235, C. Civ. Proc. 1895; re-en. Sec. 6838, Rev. C. 1907; re-en. Sec. 9443, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 702; re-en. Sec. 9443, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1937; R.C.M. 1947, 93-5835; amd. Sec. 1, Ch. 503, L. 1991.

Cross-References

"Year" defined, 1-1-301.

25-13-803. Subsequent redemptions — when permitted, amount paid. (1) If property be so redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it from the last redemptioner on paying the sum on such last redemption with interest thereon at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him with like interest on such amount, and the amount of any liens held by the said last redemptioner prior to his own, with interest; but the judgment under which the property was so sold need not be so paid as a lien. The property may be again, and as often as any redemptioner is so disposed, redeemed from any previous redemptioner, within 60 days after the last redemption, on paying the sum paid on the last previous redemption with interest thereon at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him with like interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with like interest.

(2) If the judgment debtor or the judgment debtor's spouse redeem, the judgment debtor or the spouse must make the same payments as are required to effect a redemption by a redemptioner.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part); amd. Sec. 2, Ch. 503, L. 1991.

25-13-804. Redemption by stockholder or corporation. (1) If a stockholder of a corporation redeems, the corporation, within 1 year after the date of sale, may redeem by paying to the redemptioner or the sheriff for his benefit the amount paid to effect the redemption, with interest thereon at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner, with like interest thereon.

(2) When a stockholder redeems, any other stockholder or stockholders may, at any time after such redemption and within 60 days after the expiration of 1 year from the date of sale, contribute to the redemption by paying to the redeeming stockholder or depositing with the sheriff for his benefit a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the date of redemption until the date of contribution at the rate established by the judgment in the action that led to the execution sale, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with like interest thereon; and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed and shall succeed to

the said property as tenants in common in such proportions, respectively, as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present an affidavit setting forth the number of shares of stock owned by him and, to the best of his knowledge, the number of shares of stock of the corporation outstanding.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(3); amd. Sec. 3, Ch. 503, L. 1991.

25-13-805. Redemption by debtor from spouse. If the spouse of a judgment debtor redeem, the judgment debtor, within 1 year after the date of sale, may redeem by paying the spouse or the spouse's successors in interest or the sheriff for the benefit of the spouse or the successors in interest of the spouse the amount paid to effect the redemption, with interest thereon at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the spouse or the successors in interest of the spouse, with like interest thereon.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(4); amd. Sec. 4, Ch. 503, L. 1991.

25-13-806. Notice of redemption, liens, and taxes and assessments paid. Written notice of redemption must be given to the sheriff and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk, and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).

Cross-References

Liability of clerk relating to duties as recorder, 7-4-2623.

Fees of County Clerk, 7-4-2631.

25-13-807. Papers redemptioner must produce. A redemptioner must produce, to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff:

(1) a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or by the clerk of the district court in the county where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the county clerk; or if

upon an attachment, a copy of the affidavit of attachment, certified by the clerk of the district court;

(2) a copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto;

(3) an affidavit by himself or his agent showing the amount then actually due upon the lien.

History: **En. Sec. 234, p. 182, L. 1867; re-en. Sec. 284, p. 88, Cod. Stat. 1871; re-en. Sec. 334, p. 131, L. 1877; re-en. Sec. 334, 1st Div. Rev. Stat. 1879; re-en. Sec. 345, 1st Div. Comp. Stat. 1887; amd. Sec. 1238, C. Civ. Proc. 1895; re-en. Sec. 6841, Rev. C. 1907; re-en. Sec. 9446, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 705; re-en. Sec. 9446, R.C.M. 1935; R.C.M. 1947, 93-5838.**

Cross-References

Search of records, 7-4-2621.

25-13-808. To whom redemption money paid. The payment mentioned in 25-13-802 through 25-13-806 may be made to the purchaser or redemptioner, as the case may be, or for him to the officer who made the sale or, in case his term of office has expired, to his successor in office.

History: **En. Sec. 233, p. 182, L. 1867; en. Sec. 283, p. 88, Cod. Stat. 1871; re-en. Sec. 333, p. 129, L. 1877; re-en. Sec. 333, 1st Div. Rev. Stat. 1879; re-en. Sec. 344, 1st Div. Comp. Stat. 1887; re-en. Sec. 1237, C. Civ. Proc. 1895; re-en. Sec. 6840, Rev. C. 1907; re-en. Sec. 9445, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 704; re-en. Sec. 9445, R.C.M. 1935; R.C.M. 1947, 93-5837(part).**

25-13-809. Effect of redemption by debtor or debtor's spouse — certificate of redemption. (1) If the debtor redeem, the effect of the sale is terminated and the debtor is restored to his own estate. If the spouse redeem, such spouse shall become the owner of the debtor spouse's interest, subject to any liens thereon at the time of the execution sale.

(2) Upon a redemption by a debtor or the debtor's spouse, the person to whom the payment was made must execute and deliver to him or her a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk must note the record thereof in the margin of the record of the certificate of sale.

History: **En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).**

Cross-References

Power of judicial officers to take acknowledgments, 3-1-404.

25-13-810. When purchaser entitled to conveyance. If no redemption be made within 1 year after the sale, the purchaser or his assignee is entitled to a conveyance; or if so redeemed, whenever 60 days have elapsed and no other redemption has been made and notice thereof given and the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of 1 year from the date of the sale to redeem the property.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).

Cross-References

"Year" defined, 1-1-301.

25-13-811. Who to execute conveyance. In all cases when, under the provisions of this chapter, a purchaser of property at execution sale shall be entitled to a conveyance of the same, such conveyance shall be executed to him by the officer who made the sale if he still be in office, but in the case the officer who made such sale is not in office at the time the purchaser may be entitled to such conveyance, then the conveyance shall be executed by his successor in office.

History: En. Sec. 233, p. 182, L. 1867; en. Sec. 283, p. 88, Cod. Stat. 1871; re-en. Sec. 333, p. 129, L. 1877; re-en. Sec. 333, 1st Div. Rev. Stat. 1879; re-en. Sec. 344, 1st Div. Comp. Stat. 1887; re-en. Sec. 1237, C. Civ. Proc. 1895; re-en. Sec. 6840, Rev. C. 1907; re-en. Sec. 9445, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 704; re-en. Sec. 9445, R.C.M. 1935; R.C.M. 1947, 93-5837(part).

25-13-812 through 25-13-820 reserved.

25-13-821. Possession of lands during redemption period. The purchaser of lands at execution sales is not entitled to the possession thereof as against the execution debtor during the period of redemption allowed by law while said execution debtor personally occupies the land as a home for himself and his family. The intention hereof being to insure to such debtor the possession of his land during the year of redemption.

History: En. Sec. 1, Ch. 230, L. 1921; re-en. Sec. 9449, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1933; re-en. Sec. 9449, R.C.M. 1935; R.C.M. 1947, 93-5841(part).

25-13-822. Rents and profits during redemption period, accounting. (1) The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, are entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser or his or their assigns from the property thus sold preceding such redemption, the amount of such rents and profits shall be a credit upon the redemption money to be paid. Any payments made under 25-13-802(2) and (3) must be subtracted from the credit for rents and profits.

(2) If the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor or his assigns a written and verified statement of the amount of such rents and profits thus received, the period for redemption is extended 5 days after such sworn statement is given by such purchaser or his assigns to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of 1 month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in any court of competent jurisdiction to compel an accounting and disclosure of such rents and profits, and until 15 days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

History: En. Sec. 236, p. 183, L. 1867; rep. Sec. 751, p. 187, Cod. Stat. 1871; en. Sec. 1240, C. Civ. Proc. 1895; re-en. Sec. 6843, Rev. C. 1907; re-en. Sec. 9448, R.C.M. 1921; Cal. C. Civ. Proc. 707; re-en. Sec. 9448, R.C.M. 1935; R.C.M. 1947, 93-5840; amd. Sec. 5, Ch. 503, L. 1991.

25-13-823. Restraint of waste during redemption period. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale or entitled to possession afterward, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, to use it in the ordinary course of husbandry, to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor or for the repair of fences or for fuel for his family while he occupies the property.

History: En. Sec. 235, p. 182, L. 1867; re-en. Sec. 285, p. 89, Cod. Stat. 1871; re-en. Sec. 335, p. 131, L. 1877; re-en. Sec. 335, 1st Div. Rev. Stat. 1879; re-en. Sec. 346, 1st Div. Comp. Stat. 1887; re-en. Sec. 1239, C. Civ. Proc. 1895; re-en. Sec. 6842, Rev. C. 1907; re-en. Sec. 9447, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 706; re-en. Sec. 9447, R.C.M. 1935; R.C.M. 1947, 93-5839.

Cross-References

When defendant may be arrested, 27-16-102.

Injunctions, Title 27, ch. 19.

General duty of care, 28-1-201.

Waste prohibited, 71-1-106.

Injunction to prevent injury to property, 71-1-227.

25-13-824. Enjoining injury to property after sale and before conveyance. The court or judge may, by injunction, upon good cause shown, restrain the party in possession from doing any act to the injury of real property after a sale on execution, before a conveyance.

History: En. Sec. 240, p. 93, Bannack Stat.; re-en. Sec. 261, p. 188, L. 1867; re-en. Sec. 310, p. 95, Cod. Stat. 1871; re-en. Sec. 360, p. 139, L. 1877; re-en. Sec. 360, 1st Div. Rev. Stat. 1879; re-en. Sec. 372, 1st Div. Comp. Stat. 1887; re-en. Sec. 1318, C. Civ. Proc. 1895; re-en. Sec. 6878, Rev. C. 1907; re-en. Sec. 9496, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 745; re-en. Sec. 9496, R.C.M. 1935; R.C.M. 1947, 93-6220(part).

Cross-References

When defendant may be arrested, 27-16-102.

Injunctions, Title 27, ch. 19.

General duty of care, 28-1-201.

Waste prohibited, 71-1-106.

Injunction to prevent injury to property, 71-1-227.

25-13-825. Damages for injury to property after sale and before conveyance. When real property has been sold on execution, the purchaser thereof or any person who may have succeeded to his interest may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyance.

History: En. Sec. 262, p. 188, L. 1867; re-en. Sec. 311, p. 95, L. 1871; re-en. Sec. 361, p. 139, L. 1877; re-en. Sec. 361, 1st Div. Rev. Stat. 1879; re-en. Sec. 373, 1st Div. Comp. Stat. 1887; re-en. Sec. 1319, C. Civ. Proc. 1895; re-en. Sec. 6879, Rev. C. 1907; re-en. Sec. 9497, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 746; re-en. Sec. 9497, R.C.M. 1935; R.C.M. 1947, 93-6221.

Cross-References

Injury to property defined, 27-1-106.

Damages generally, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Part 9

Disposal of Foreclosed Agricultural Land

25-13-901. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural land" means real property that is principally used for the production of livestock, poultry, field crops, fruit, or other animal or vegetable matter for food or fiber.

(2) "Holder of foreclosed agricultural land" means a national- or state-chartered bank, a mutual or stock insurance company regulated by any state, a mortgage company, a farm credit system lender, or a state or federal agency that has acquired the right to dispose of agricultural land through foreclosure of a mortgage on the land or through execution of a judgment obtained by it against the immediately preceding owner of the land. *(Terminates June 30, 1996—sec. 6, Ch. 472, L. 1987.)*

History: En. Sec. 1, Ch. 472, L. 1987.

25-13-902. *(Temporary)* **Right of first refusal.** (1) A holder of foreclosed agricultural land shall, when leasing such land or any portion thereof to a third party, make a good faith offer to lease the land or portion thereof to the immediately preceding owner if such owner has financial resources and farm management skills and experience to assure a reasonable prospect of success in the proposed farming operation. The offer to lease land to the immediately preceding owner must be upon the same terms and conditions offered by a third party that are acceptable to the lessor.

(2) A holder of foreclosed agricultural land shall, when selling such land or any portion thereof to a third party, make a good faith offer to sell the land or portion thereof to the immediately preceding owner for the same price offered by a third party that is acceptable to the seller.

(3) An offer to lease to the immediately preceding owner is required each time the foreclosed agricultural land is leased to a third party, except that once the immediately preceding owner fails to meet the terms of a lease offer, the right to meet future offers is extinguished and no offer to lease is required. An offer to sell to the immediately preceding owner is required only the first time the property is sold to a third party.

(4) An offer sent by certified mail to the name and address filed by the immediately preceding owner under 25-13-904 is a good faith offer.

(5) This section does not apply to foreclosed agricultural land if such land is owned by the state pursuant to The Enabling Act (Act of February 22, 1889, Ch. 180, 25 Stat. 676). *(Terminates June 30, 1996—sec. 6, Ch. 472, L. 1987.)*

History: En. Sec. 2, Ch. 472, L. 1987.

25-13-903. *(Temporary)* **Time to exercise right.** (1) An immediately preceding owner of foreclosed agricultural land may not exercise the right to lease agricultural land later than 15 days after receiving an offer to lease under 25-13-902 and may not exercise the right to purchase agricultural land later than 60 days after receiving an offer to sell under 25-13-902.

(2) The right of the immediately preceding owner to purchase or lease any foreclosed agricultural land under 25-13-902 applies only for the same length

of time that real estate may be held by a bank under 32-1-423(2). *(Terminates June 30, 1996—sec. 6, Ch. 472, L. 1987.)*

History: En. Sec. 3, Ch. 472, L. 1987.

25-13-904. *(Temporary)* **Notice required from immediately preceding owner.** (1) An immediately preceding owner must notify in writing the holder of foreclosed agricultural land of the name and current address of one individual who is authorized to exercise the right of first refusal on behalf of the immediately preceding owner. If the immediately preceding owner is an entity for which no single individual is ordinarily authorized to act, the notice shall also indicate the necessary transfer of authority that enables the individual named in the notice to act.

(2) Failure of the immediately preceding owner to file the notice required by subsection (1) within 25 days after publication of notice of foreclosure or execution sale is served or within 15 days after a change of his address operates as a waiver of the right of first refusal.

(3) A foreclosing creditor, within the definition of holder of foreclosed agricultural land, or a sheriff must advise the immediately preceding owner at the time notice of foreclosure or writ of execution is served of the right of first refusal granted in 25-13-902 and of the notice requirement of subsection (1). *(Terminates June 30, 1996—sec. 6, Ch. 472, L. 1987.)*

History: En. Sec. 4, Ch. 472, L. 1987.

CHAPTER 14

PROCEEDINGS IN AID OF EXECUTION

Part 1 — Proceedings to Determine Availability of Property

25-14-101. Debtor to answer concerning his property when execution unsatisfied.
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Part 1

Proceedings to Determine Availability of Property

Part Cross-References

Referees, Title 25, ch. 7, part 7.

Masters, Rule 53, M.R.Civ.P. (see Title 25, ch. 20).

25-14-101. Debtor to answer concerning his property when execution unsatisfied. When an execution against property of the judgment debtor or of any one of several debtors in the same judgment, issued to the sheriff of the county where he resides or, if he does not reside in this state, to the sheriff of the county where the judgment is docketed, is returned unsatisfied in whole or in part, the judgment creditor, at any time after such return is made, is entitled to an order from a judge of the court requiring such judgment debtor to appear and answer concerning his property before such judge or a referee appointed by him at a time and place specified in the order; but no judgment debtor who is a resident may be required to attend before a judge or referee out of the county in which he resides.

History: En. Sec. 215, p. 88, Bannack Stat.; re-en. Sec. 238, p. 184, L. 1867; re-en. Sec. 287, p. 90, Cod. Stat. 1871; re-en. Sec. 338, p. 133, L. 1877; re-en. Sec. 338, 1st Div. Rev. Stat. 1879; re-en. Sec. 350, 1st Div. Comp. Stat. 1887; re-en. Sec. 1260, C. Civ. Proc. 1895; re-en. Sec. 6848, Rev. C. 1907; re-en. Sec. 9454, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 714; re-en. Sec. 9454, R.C.M. 1935; R.C.M. 1947, 93-5901; amd. Sec. 108, Ch. 575, L. 1981.

Cross-References

Rules for determining residence, 1-1-215.

Return of the execution, 25-13-404.

Clerk to record returned execution when levy on real property, 25-13-405.

25-14-102. Procedure when debtor withholding property from execution, arrest. (1) After the issuing of an execution against property and upon proof, by affidavit of a party or otherwise, to the satisfaction of a judge of the court that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such judge may, by an order, require the judgment debtor to appear at a specified time and place before such judge or a referee appointed by him to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution.

(2) Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor or his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into an undertaking with sufficient surety that he will attend from time to time before the judge or referee, as may be directed during the pendency of proceedings and until the final determination thereof, and will not in the meantime dispose of any

portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.

History: En. Sec. 216, p. 88, Bannack Stat.; en. Sec. 239, p. 184, L. 1867; re-en. Sec. 288, p. 90, Cod. Stat. 1871; re-en. Sec. 339, p. 133, L. 1877; re-en. Sec. 339, 1st Div. Rev. Stat. 1879; re-en. Sec. 351, 1st Div. Comp. Stat. 1887; re-en. Sec. 1261, C. Civ. Proc. 1895; re-en. Sec. 6849, Rev. C. 1907; re-en. Sec. 9455, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 715; re-en. Sec. 9455, R.C.M. 1935; R.C.M. 1947, 93-5902.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Effect of discharge, 25-14-309.

Discharge at instance of plaintiff, 25-14-311.

Discharge upon failure of plaintiff to advance money for support of prisoner, 25-14-312.

Affidavits, Title 26, ch. 1, part 10.

25-14-103. Debtors of judgment debtor and those holding his property to answer. After the issuing or return of an execution against property of the judgment debtor or of any one of several debtors in the same judgment, or upon proof, by affidavit or otherwise, to the satisfaction of the judge that any person or corporation has property of such judgment debtor or is indebted to him in an amount exceeding $50, the judge may, by an order, require such person or corporation or any officer or member thereof to appear at a specified time and place before him or a referee appointed by him and answer concerning the same.

History: En. Sec. 218, p. 88, Bannack Stat.; re-en. Sec. 241, p. 184, L. 1867; re-en. Sec. 290, Cod. Stat. 1871; re-en. Sec. 341, p. 134, L. 1877; re-en. Sec. 341, 1st Div. Rev. Stat. 1879; re-en. Sec. 353, 1st Div. Comp. Stat. 1887; re-en. Sec. 1263, C. Civ. Proc. 1895; re-en. Sec. 6851, Rev. C. 1907; re-en. Sec. 9457, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 717; re-en. Sec. 9457, R.C.M. 1935; R.C.M. 1947, 93-5904.

Cross-References

Debts owed to judgment debtor, 25-13-502.

Property claimed by third persons, 25-13-503.

Affidavits, Title 26, ch. 1, part 10.

25-14-104. Procedure when debt to or ownership of judgment debtor denied. If it appear that a person or corporation alleged to have property of the judgment debtor or to be indebted to him claims an interest in the property adverse to him or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt; and the court or judge may, by order, forbid a transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same or the court in which the action is brought, at any time, upon such terms as may be just.

History: En. Sec. 221, p. 89, Bannack Stat.; re-en. Sec. 244, p. 185, L. 1867; re-en. Sec. 293, Cod. Stat. 1871; re-en. Sec. 344, p. 135, L. 1877; re-en. Sec. 344, 1st Div. Rev. Stat. 1879; re-en. Sec. 356, 1st Div. Comp. Stat. 1887; re-en. Sec. 1266, C. Civ. Proc. 1895; re-en. Sec. 6854, Rev. C. 1907; re-en. Sec. 9460, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 720; re-en. Sec. 9460, R.C.M. 1935; R.C.M. 1947, 93-5907.

Cross-References

Property claimed by third persons, 25-13-503.

25-14-105. Requiring witnesses to testify. Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under parts 1 and 2 of this chapter, in the same manner as upon the trial of an issue.

History: En. Sec. 219, p. 88, Bannack Stat.; re-en. Sec. 242, p. 185, L. 1867; re-en. Sec. 291, Cod. Stat. 1871; re-en. Sec. 342, p. 134, L. 1877; re-en. Sec. 342, 1st Div. Rev. Stat. 1879; re-en. Sec. 354, 1st Div. Comp. Stat. 1887; re-en. Sec. 1264, C. Civ. Proc. 1895; re-en. Sec. 6852, Rev. C. 1907; re-en. Sec. 9458, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 718; re-en. Sec. 9458, R.C.M. 1935; R.C.M. 1947, 93-5905.

Cross-References

"Testify" defined, 1-1-202.

Subpoenas and witnesses, Title 26, ch. 2.

25-14-106. Immunity of witnesses to criminal proceedings. A party or witness examined in proceedings authorized by parts 1 and 2 of this chapter is not excused from answering a question on the ground that his examination will tend to convict him of the commission of a fraud or to prove that he has been a party or privy to or knowing of a conveyance, assignment, transfer, or other disposition of property for any purpose or that he or any other person claims to be entitled, as against the judgment creditor or a receiver appointed or to be appointed in the proceedings, to hold property derived from or through the judgment debtor or to be discharged from the payment of a debt which was due to the judgment debtor or to a person in his behalf. But an answer cannot be used as evidence against the person so answering in a criminal action or criminal proceeding.

History: En. Sec. 1268, C. Civ. Proc. 1895; re-en. Sec. 6856, Rev. C. 1907; re-en. Sec. 9462, R.C.M. 1921; re-en. Sec. 9462, R.C.M. 1935; R.C.M. 1947, 93-5909.

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

25-14-107. Order to apply property to satisfaction of judgment. The judge or referee may order any property of a judgment debtor, not exempt from execution, in the hands of such debtor or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment.

History: En. Sec. 220, p. 89, Bannack Stat.; re-en. Sec. 243, p. 185, L. 1867; re-en. Sec. 292, Cod. Stat. 1871; re-en. Sec. 343, p. 135, L. 1877; re-en. Sec. 343, 1st Div. Rev. Stat. 1879; re-en. Sec. 355, 1st Div. Comp. Stat. 1887; re-en Sec. 1265, C. Civ. Proc. 1895; re-en. Sec. 6853, Rev. C. 1907; re-en. Sec. 9459, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 719; re-en. Sec. 9459, R.C.M. 1935; R.C.M. 1947, 93-5906.

Cross-References

Debts owed to judgment debtor, 25-13-502.

Property claimed by third persons, 25-13-503.

Property exempt from execution, Title 25, ch. 13, part 6.

25-14-108. Contempt to disobey referee's orders. If any person, party, or witness disobey an order of the referee, properly made in the proceedings before him under parts 1 and 2 of this chapter, he may be punished by the court or judge ordering the reference for a contempt.

History: En. Sec. 222, p. 89, Bannack Stat.; re-en. Sec. 245, p. 185, L. 1867; re-en. Sec. 294, Cod. Stat. 1871; re-en. Sec. 345, p. 135, L. 1877; re-en. Sec. 345, 1st Div. Rev. Stat. 1879; re-en. Sec. 357, 1st Div. Comp. Stat. 1887; re-en. Sec. 1267, C. Civ. Proc. 1895; re-en. Sec. 6855, Rev. C. 1907; re-en. Sec. 9461, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 721; re-en. Sec. 9461, R.C.M. 1935; R.C.M. 1947, 93-5908.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Part 2
Appointment of a Receiver

Part Cross-References

Receivers, Title 27, ch. 20.

25-14-201. Appointment of a receiver — notice. At any time after making an order requiring the judgment debtor or any other person to attend and be examined, as prescribed in parts 1 and 2 of this chapter, the judge may make an order appointing a receiver of the property of the judgment debtor. At least 2 days' notice of the application for the order appointing a receiver must be given personally to the judgment debtor unless the judge is satisfied that he cannot, with reasonable diligence, be found within the state, in which case the order must recite that fact and may dispense with notice or direct notice to be given in any manner which the judge thinks proper. But where the order to attend and be examined has been served upon the judgment debtor, a receiver may be appointed upon the return day thereof or at the close of the examination without further notice to him.

History: En. Sec. 1269, C. Civ. Proc. 1895; re-en. Sec. 6857, Rev. C. 1907; re-en. Sec. 9463, R.C.M. 1921; re-en. Sec. 9463, R.C.M. 1935; R.C.M. 1947, 93-5910.

Cross-References

Service of process and other papers, Title 25, ch. 3.

Appointment procedure, Title 27, ch. 20, part 2.

25-14-202. Order appointing receiver to be filed. An order appointing a receiver must be filed in the office of the clerk of the court where the judgment is docketed or a transcript of the original docket is filed.

History: En. Sec. 1270, C. Civ. Proc. 1895; re-en. Sec. 6858, Rev. C. 1907; re-en. Sec. 9464, R.C.M. 1921; re-en. Sec. 9464, R.C.M. 1935; R.C.M. 1947, 93-5911(part); amd. Sec. 109, Ch. 575, L. 1981.

Cross-References

Duties of County Clerk and Recorder, 7-4-2611.

25-14-203. Oath and undertaking. The receiver must take and subscribe the official oath and give an undertaking, if required by the judge.

History: En. Sec. 1270, C. Civ. Proc. 1895; re-en. Sec. 6858, Rev. C. 1907; re-en. Sec. 9464, R.C.M. 1921; re-en. Sec. 9464, R.C.M. 1935; R.C.M. 1947, 93-5911(part).

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Oath and undertaking to faithfully discharge duties, 27-20-301.

25-14-204. When property vests in receiver. The property of the judgment debtor is vested in a receiver who has duly qualified from the time of filing the order appointing him, subject to the following exceptions:

(1) Real property is vested in the receiver only from the time when the order is filed with the clerk of the court or a certified copy thereof, as the case may be, is filed with the clerk of the county where it is situated.

(2) Where the judgment debtor, at the time when the order is filed, resides in another county of the state, his personal property is vested in the receiver only from the time when a copy of the order, certified by the clerk in whose office it is filed, is filed with the clerk of the district court of the county where he resides.

History: En. Sec. 1271, C. Civ. Proc. 1895; re-en. Sec. 6859, Rev. C. 1907; re-en. Sec. 9465, R.C.M. 1921; re-en. Sec. 9465, R.C.M. 1935; R.C.M. 1947, 93-5912.

Cross-References

Rules for determining residence, 1-1-215.

Powers of receiver, 27-20-302.

25-14-205. Relation back of receiver's title. (1) Where the receiver's title to personal property has become vested, as prescribed in 25-14-204, it also extends back by relation for the benefit of the judgment creditor in whose behalf the proceedings were instituted, as follows:

(a) Where an order requiring the judgment debtor to attend and be examined has been served before the appointment of a receiver or the judgment debtor has been brought before the judge on arrest, the receiver's title extends back so as to include the personal property of the judgment debtor at the time of the service of the order or his arrest.

(b) Where an order has not been served or no arrest, as specified in subsection (1)(a), but an order has been made requiring a person to attend and be examined concerning property belonging or a debt due to the judgment debtor, the receiver's title extends to the personal property belonging to the judgment debtor which was in the hands or under the control of the person or corporation thus required to attend at the time of the service of the order and to a debt then due him from that person or corporation.

(c) In every other case, where notice of the application for the appointment of the receiver was given to the judgment debtor, the receiver's title extends to the personal property of the judgment debtor at the time when the notice was served, either personally or by complying with the requirements of an order prescribing a substitute for personal service.

(2) Where the case is within two or more of subsections (1)(a) through (1)(c) of this section, the rule most favorable to the judgment creditor must be adopted.

(3) But this section does not affect the title of a purchaser in good faith, without notice, and for a valuable consideration or the payment of a debt in good faith and without notice.

History: En. Sec. 1272, C. Civ. Proc. 1895; re-en. Sec. 6860, Rev. C. 1907; re-en. Sec. 9466, R.C.M. 1921; re-en. Sec. 9466, R.C.M. 1935; R.C.M. 1947, 93-5913.

Cross-References

Notice — actual and constructive, 1-1-217.

Arrest and bail in civil actions, Title 27, ch. 16.

Part 3

Discharge of Imprisoned Judgment Debtor

Part Cross-References

Arrest and bail in civil actions, Title 27, ch. 16.

25-14-301. Persons imprisoned to be discharged. Any person confined in jail on an execution issued on a judgment rendered in a civil action must be discharged therefrom upon the conditions of this part specified.

History: En. Sec. 107, p. 48, Cod. Stat. 1871; re-en. Sec. 145, p. 74, L. 1877; re-en. Sec. 145, 1st Div. Rev. Stat. 1879; re-en. Sec. 147, 1st Div. Comp. Stat. 1887; re-en. Sec. 2060, C. Civ. Proc. 1895; re-en. Sec. 7257, Rev. C. 1907; re-en. Sec. 9875, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1143; re-en. Sec. 9875, R.C.M. 1935; R.C.M. 1947, 93-9601.

25-14-302. Notice of application for discharge. Such person must cause a notice in writing to be given to the plaintiff or his agent or attorney that at a certain time and place he will apply to a judge of the district court of the county in which such person may be confined for the purpose of obtaining a discharge from his imprisonment.

History: En. Sec. 108, p. 48, Cod. Stat. 1871; re-en. Sec. 146, p. 74, L. 1877; re-en. Sec. 146, 1st Div. Rev. Stat. 1879; re-en. Sec. 148, 1st Div. Comp. Stat. 1887; re-en. Sec. 2061, C. Civ. Proc. 1895; re-en. Sec. 7258, Rev. C. 1907; re-en. Sec. 9876, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1144; re-en. Sec. 9876, R.C.M. 1935; R.C.M. 1947, 93-9602.

25-14-303. Service of notice. Such notice must be served upon the plaintiff or his agent or attorney 1 day at least before the hearing of the application. If the plaintiff be not a resident of the county and have no agent or attorney in the county, no such notice will be served.

History: En. Sec. 109, p. 48, Cod. Stat. 1871; re-en. Sec. 147, p. 74, L. 1877; re-en. Sec. 147, 1st Div. Rev. Stat. 1879; re-en. Sec. 149, 1st Div. Comp. Stat. 1887; re-en. Sec. 2062, C. Civ. Proc. 1895; re-en. Sec. 7259, Rev. C. 1907; re-en. Sec. 9877, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1145; re-en. Sec. 9877, R.C.M. 1935; R.C.M. 1947, 93-9603.

Cross-References

Rules for determining residency, 1-1-215.

Service of notice, Rules 4 and 5, M.R.Civ.P. (see Title 25, ch. 20).

25-14-304. Hearing on application. At the time and place specified in the notice, such person must be taken before the judge, who must examine him under oath concerning his estate and property and effects, the disposal thereof, and his ability to pay the judgment for which he is committed; and such judge may also hear any other legal or pertinent evidence that may be produced by the debtor or the creditor.

History: En. Sec. 110, p. 48, Cod. Stat. 1871; re-en. Sec. 148, p. 74, L. 1877; re-en. Sec. 148, 1st Div. Rev. Stat. 1879; re-en. Sec. 150, 1st Div. Comp. Stat. 1887; re-en. Sec. 2063, C. Civ. Proc. 1895; re-en. Sec. 7260, Rev. C. 1907; re-en. Sec. 9878, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1146; re-en. Sec. 9878, R.C.M. 1935; R.C.M. 1947, 93-9604.

Cross-References

Relevancy and its limits, Art. IV, M.R.Ev. (see Title 26, ch. 10).

25-14-305. Interrogatories directed to prisoner by plaintiff. The plaintiff in the action may, upon such examination, propose to the prisoner any such interrogatories pertinent to the inquiry; and they must, if required by the plaintiff, be proposed and answered in writing, and the answer must be signed and sworn to by the prisoner.

History: En. Sec. 2064, C. Civ. Proc. 1895; re-en. Sec. 7261, Rev. C. 1907; re-en. Sec. 9879, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1147; re-en. Sec. 9879, R.C.M. 1935; R.C.M. 1947, 93-9605; amd. Sec. 110, Ch. 575, L. 1981.

Cross-References

Interrogatories — procedures, Rule 33(a), M.R.Civ.P. (see Title 25, ch. 20).

25-14-306. Prisoner to take oath. If, upon the examination, the judge is satisfied that the prisoner is entitled to his discharge, he must administer to him the following oath: "I, ..., do solemnly swear that I have not any estate, real or personal, to the amount of $50, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed or in any way disposed of with design to secure the same to my use or to hinder, delay, or defraud my creditors; so help me God."

History: En. Sec. 111, p. 48, Cod. Stat. 1871; re-en. Sec. 149, p. 74, L. 1877; re-en. Sec. 149, 1st Div. Rev. Stat. 1879; re-en. Sec. 151, 1st Div. Comp. Stat. 1887; re-en. Sec. 2065, C. Civ. Proc. 1895; re-en. Sec. 7262, Rev. C. 1907; re-en. Sec. 9880, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1148; re-en. Sec. 9880, R.C.M. 1935; R.C.M. 1947, 93-9606.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

25-14-307. Order of discharge. After administering the oath, the judge must issue an order that the prisoner be discharged from custody, and the officer, upon the service of such order, must discharge the prisoner forthwith if he be imprisoned for no other cause.

History: En. Sec. 112, p. 48, Cod. Stat. 1871; re-en. Sec. 150, p. 74, L. 1877; re-en. Sec. 150, 1st Div. Rev. Stat. 1879; re-en. Sec. 152, 1st Div. Comp. Stat. 1887; re-en. Sec. 2066, C. Civ. Proc. 1895; re-en. Sec. 7263, Rev. C. 1907; re-en. Sec. 9881, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1149; re-en. Sec. 9881, R.C.M. 1935; R.C.M. 1947, 93-9607.

25-14-308. Reapplication for discharge. If such judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding 10 days in the same manner as above provided, and the same proceedings must thereupon be had.

History: En. Sec. 113, p. 48, Cod. Stat. 1871; re-en. Sec. 151, p. 74, L. 1877; re-en. Sec. 151, 1st Div. Rev. Stat. 1879; re-en. Sec. 153, 1st Div. Comp. Stat. 1887; re-en. Sec. 2067, C. Civ. Proc. 1895; re-en. Sec. 7264, Rev. C. 1907; re-en. Sec. 9882, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1150; re-en. Sec. 9882, R.C.M. 1935; R.C.M. 1947, 93-9608.

25-14-309. Effect of discharge. The prisoner, after being so discharged, is forever exempt from arrest or imprisonment for the same debt unless he be convicted of having willfully sworn falsely upon his examination before the judge or in taking the oath before prescribed.

History: En. Sec. 114, p. 48, Cod. Stat. 1871; re-en. Sec. 152, p. 74, L. 1877; re-en. Sec. 152, 1st Div. Rev. Stat. 1879; re-en. Sec. 154, 1st Div. Comp. Stat. 1887; re-en. Sec. 2068, C. Civ. Proc. 1895; re-en. Sec. 7265, Rev. C. 1907; re-en. Sec. 9883, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1151; re-en. Sec. 9883, R.C.M. 1935; R.C.M. 1947, 93-9609.

Cross-References

Execution against person of judgment debtor, 25-13-308.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

False swearing, 45-7-202.

25-14-310. Judgment unaffected. The judgment against any prisoner who is discharged remains in full force against any estate which may then or at any time afterward belong to him, and the plaintiff may take out a new execution against the goods and estate of the prisoner in like manner as if he had never been committed.

History: En. Sec. 2069, C. Civ. Proc. 1895; re-en. Sec. 7266, Rev. C. 1907; re-en. Sec. 9884, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1152; re-en. Sec. 9884, R.C.M. 1935; R.C.M. 1947, 93-9610.

Cross-References

Execution against person of judgment debtor, 25-13-308.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

25-14-311. Discharge at instance of plaintiff. The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action.

History: En. Sec. 115, p. 48, Cod. Stat. 1871; re-en. Sec. 153, p. 74, L. 1877; re-en. Sec. 153, 1st Div. Rev. Stat. 1879; re-en. Sec. 155, 1st Div. Comp. Stat. 1887; re-en. Sec. 2070,

C. Civ. Proc. 1895; re-en. Sec. 7267, Rev. C. 1907; re-en. Sec. 9885, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1153; re-en. Sec. 9885, R.C.M. 1935; R.C.M. 1947, 93-9611.

Cross-References

Execution against person of judgment debtor, 25-13-308.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

25-14-312. Discharge upon failure of plaintiff to advance money for support of prisoner. Whenever a prisoner is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor or his agent or attorney must advance to the jailer, on such commitment, sufficient money for the support of the prisoner for 1 week and must make the like advance for every successive week of his imprisonment, and in case of failure to do so, the jailer must forthwith discharge such prisoner from custody, and such discharge has the same effect as if made by order of the creditor.

History: En. Sec. 2071, C. Civ. Proc. Sec. 1895; re-en. Sec. 7268, Rev. C. 1907; re-en. Sec. 9886, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1154; re-en. Sec. 9886, R.C.M. 1935; R.C.M. 1947, 93-9612.

Cross-References

Execution against person of judgment debtor, 25-13-308.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

CHAPTER 15

LIABILITY OF JOINT DEBTORS

Part 1 — Applying Judgment to Joint Debtor

25-15-101. Summoning joint debtor not originally served.
25-15-102. Content and service of summons.
25-15-103. Affidavit to accompany summons — new complaint unnecessary.
25-15-104. Answer — time for filing, contents.
25-15-105. What constitute the pleadings.
25-15-106. Trial of issues — limit on verdict.

Part 2 — Discharge of Joint Debtor

25-15-201. Discharge of one joint debtor.
25-15-202. Effect of discharge — right of contribution.

Chapter Cross-References

Execution when only some of defendants served, 25-15-101.

Multiple defendants jointly and severally liable, 27-1-703.

Part 1

Applying Judgment to Joint Debtor

25-15-101. Summoning joint debtor not originally served. When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in Rule 4D(10), M.R.Civ.P., those who were not originally served with the summons and did not appear to the action may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

History: En. Sec. 291, p. 104, Bannack Stat.; re-en. Sec. 346, p. 205, L. 1867; re-en. Sec. 420, p. 119, Cod. Stat. 1871; re-en. Sec. 446, p. 161, L. 1877; re-en. Sec. 446, 1st Div. Rev. Stat. 1879; re-en. Sec. 459, 1st Div. Comp. Stat. 1887; re-en. Sec. 1780, C. Civ. Proc. 1895; re-en. Sec. 7129, Rev. C. 1907; re-en. Sec. 9762, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 989; re-en. Sec. 9762, R.C.M. 1935; R.C.M. 1947, 93-8101.

Cross-References

Execution when only some of defendants served, 25-13-303.

25-15-102. Content and service of summons. The summons, as provided in 25-15-101, must describe the judgment and require the person summoned to show cause why he should not be bound by it and must be served in the same manner and returnable within the same time as the original summons.

History: En. Sec. 292, p. 104, Bannack Stat.; re-en. Sec. 347, p. 205, L. 1867; re-en. Sec. 421, p. 119, Cod. Stat. 1871; re-en. Sec. 447, p. 161, L. 1877; re-en. Sec. 447, 1st Div. Rev. Stat. 1879; re-en. Sec. 460, 1st Div. Comp. Stat. 1887; re-en. Sec. 1781, C. Civ. Proc. 1895; re-en. Sec. 7130, Rev. C. 1907; re-en. Sec. 9763, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 990; re-en. Sec. 9763, R.C.M. 1935; R.C.M. 1947, 93-8102(part).

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

25-15-103. Affidavit to accompany summons — new complaint unnecessary. The summons must be accompanied by an affidavit of the plaintiff or his agent, representative, or attorney that the judgment or some part thereof remains unsatisfied and must specify the amount due thereon. It is not necessary to file a new complaint.

History: Ap. p. Sec. 293, p. 104, Bannack Stat.; re-en. Sec. 348, p. 205, L. 1867; re-en. Sec. 422, p. 119, Cod. Stat. 1871; re-en. Sec. 448, p. 161, L. 1877; re-en. Sec. 448, 1st Div. Rev. Stat. 1879; re-en. Sec. 461, 1st Div. Comp. Stat. 1887; re-en. Sec. 1782, C. Civ. Proc. 1895; re-en. Sec. 7131, Rev. C. 1907; re-en. Sec. 9764, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 991; re-en. Sec. 9764, R.C.M. 1935; Sec. 93-8103, R.C.M. 1947; Ap. p. Sec. 292, p. 104, Bannack Stat.; re-en. Sec. 347, p. 205, L. 1867; re-en. Sec. 421, p. 119, Cod. Stat. 1871; re-en. Sec. 447, p. 161, L. 1877; re-en. Sec. 447, 1st Div. Rev. Stat. 1879; re-en. Sec. 460, 1st Div. Comp. Stat. 1887; re-en. Sec. 1781, C. Civ. Proc. 1895; re-en. Sec. 7130, Rev. C. 1907; re-en. Sec. 9763, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 990; re-en. Sec. 9763, R.C.M. 1935; Sec. 93-8102, R.C.M. 1947; R.C.M. 1947, 93-8102(part), 93-8103.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

25-15-104. Answer — time for filing, contents. Upon such summons, the defendant may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitations.

History: En. Sec. 294, p. 105, Bannack Stat.; re-en. Sec. 349, p. 205, L. 1867; re-en. Sec. 423, p. 119, Cod. Stat. 1871; re-en. Sec. 449, p. 161, L. 1877; re-en. Sec. 449, 1st Div. Rev. Stat. 1879; re-en. Sec. 462, 1st Div. Comp. Stat. 1887; re-en. Sec. 1783, C. Civ. Proc. 1895; re-en. Sec. 7132, Rev. C. 1907; re-en. Sec. 9765, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 992; re-en. Sec. 9765, R.C.M. 1935; R.C.M. 1947, 93-8104.

Cross-References

Statutes of Limitations, Title 27, ch. 2.

25-15-105. What constitute the pleadings. If the defendant in his answer deny the judgment or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer constitute such written allegations.

History: En. Sec. 295, p. 105, Bannack Stat.; re-en. Sec. 350, p. 205, L. 1867; re-en. Sec. 424, p. 119, Cod. Stat. 1871; re-en. Sec. 450, p. 161, L. 1877; re-en. Sec. 450, 1st Div. Rev. Stat. 1879; re-en. Sec. 463, 1st Div. Comp. Stat. 1887; re-en. Sec. 1784, C. Civ. Proc. 1895; re-en. Sec. 7133, Rev. C. 1907; re-en. Sec. 9766, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 993; re-en. Sec. 9766, R.C.M. 1935; R.C.M. 1947, 93-8105.

25-15-106. Trial of issues — limit on verdict. The issues formed may be tried as in other cases; but when the defendant denies in his answer any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must be for not exceeding the amount remaining unsatisfied on such original judgment, with interest thereon.

History: En. Sec. 296, p. 105, Bannack Stat.; re-en. Sec. 351, p. 205, L. 1867; re-en. Sec. 425, p. 119, Cod. Stat. 1871; re-en. Sec. 451, p. 161, L. 1877; re-en. Sec. 451, 1st Div. Rev. Stat. 1879; re-en. Sec. 464, 1st Div. Comp. Stat. 1887; re-en. Sec. 1785, C. Civ. Proc. 1895; re-en. Sec. 7134, Rev. C. 1907; re-en. Sec. 9767, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 994; re-en. Sec. 9767, R.C.M. 1935; R.C.M. 1947, 93-8106.

Cross-References

Trials, Title 25, ch. 7.

Amount of interest, 25-9-205.

Part 2

Discharge of Joint Debtor

25-15-201. Discharge of one joint debtor. Any joint debtor, including a partner, may compromise with a creditor, and a discharge to him by such creditor is as effectual as if made to all debtors, but such discharge does not relieve the other joint debtors. Any creditor can release a judgment in his favor against any one or more joint debtors, and such release does not discharge the others.

History: En. Sec. 1786, C. Civ. Proc. 1895; re-en. Sec. 7135, Rev. C. 1907; re-en. Sec. 9768, R.C.M. 1921; re-en. Sec. 9768, R.C.M. 1935; R.C.M. 1947, 93-8107.

25-15-202. Effect of discharge — right of contribution. Except as provided in 27-1-703, the discharge of a joint debtor operates as a payment to the creditor equal to the proportionate interest of the debtor discharged, but the discharge of such debtor does not prevent his codebtors from enforcing the right of contribution in case they are compelled to pay the whole of the debt.

History: En. Sec. 1787, C. Civ. Proc. 1895; re-en. Sec. 7136, Rev. C. 1907; re-en. Sec. 9769, R.C.M. 1921; re-en. Sec. 9769, R.C.M. 1935; R.C.M. 1947, 93-8108; amd. Sec. 1, Ch. 253, L. 1987.

Cross-References

Compelling contribution or repayment — joint debtor, surety, 25-13-104.

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Right to contribution from joint debtor, 28-1-303.

CHAPTERS 16 THROUGH 18

RESERVED

CHAPTER 19

UNIFORM DISTRICT COURT RULES

Rule

1. Form of papers presented for filing.
2. Motions.
3. Ex parte matters.
4. Filing of discovery.
5. Pre-trial order and pre-trial conference.
6. Briefs.
7. Jury instructions and verdict forms.
8. Findings and conclusions.
9. Juror questionnaire.
10. Death or removal of attorney.
11. Judgments and decrees.
12. Exhibits.
13. Regulation of attorneys not admitted to practice in Montana.
14. Local rules allowed.

Rule 1. Form of papers presented for filing.

(a) Papers defined. The word "papers" as used in this rule includes all documents and copies except exhibits and records on appeal from lower courts.

(b) pagination, printing, etc. All papers shall be:

(1) typewritten, printed, or equivalent;

(2) clear and permanent;

(3) equally legible to printing;

(4) of type not smaller than pica;

(5) on standard quality opaque, unglazed white paper, 8 ½" X 11" in size; or standard quality, opaque, unglazed, acid-free recycled paper, and be a minimum of 25% cotton fiber content, with a minimum 50% recycled content, of which 10% shall be post-consumer waste, 8 ½" X 11" in size. After January 1, 1994, only on standard quality opaque, unglazed, acid-free recycled paper, and be a minimum of 25% cotton fiber content, minimum 50% recycled content, of which 10% shall be post-consumer waste, 8 ½" X 11" in size.

(6) printed one side only; except copies of briefs may be printed on both sides. The original brief shall be printed on one side.

(7) lines unnumbered or numbered consecutively from the top;

(8) spaced one and one-half or double;

(9) page numbered consecutively at the bottom; and

(10) bound firmly at the top.

Matters such as property descriptions or direct quotes may be single spaced.

Extraneous documents not in the above format and not readily conformable may be filed in their original form and length.

(c) Format. The first page of all papers shall conform to the following:

(1) Commencing at line 1 at the left margin, single spaced, shall be the name of the attorney or party responsible for the pleadings, together with telephone number and the complete mailing address for service of papers.

(2) Lines 1 through 7 of the right one-half of the page shall be left blank for the use of the clerk.

(3) On or below line 8, the title of the court.

(4) Commencing at line 9 or below on the left, the title of the case.

(5) On the right and opposite the title of the case, the case number and identification of the document being filed.

(6) Nonconforming papers may not be filed without leave of the court.

(d) Changes, conformance of copies. Additions, deletions, or interlineations shall be initialed by the clerk or judge at the time of filing. All copies served shall conform to the original as filed.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. Mar. 25, 1993.

Compiler's Comments

1993 Amendment: In an order dated March 25, 1993, the Supreme Court in (b)(5), after "size;", inserted remainder of subsection concerning recycled paper; and in first sentence of (b)(6), after "only;", inserted exception concerning printing on both sides and inserted second sentence concerning original brief being printed on one side.

Rule 2. Motions.

(a) Upon filing a motion or within five days thereafter, the moving party shall file a brief. The brief may be accompanied by appropriate supporting documents. Within ten days thereafter the adverse party shall file an answer brief which also may be accompanied by appropriate supporting documents. Within ten days thereafter, movant may file a reply brief or other appropriate responsive documents.

(b) Failure to file briefs. Failure to file briefs may subject the motion to summary ruling. Failure to file a brief within five days by the moving party shall be deemed an admission that the motion is without merit. Failure to file an answer brief by the adverse party within ten days shall be deemed an admission that the motion is well taken. Reply briefs by movant are optional, and failure to file will not subject a motion to summary ruling.

(c) Oral argument. The court may order oral argument sua sponte or upon application of a party.

(d) When motion deemed submitted. Unless oral argument is ordered or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of any of the applicable time limits set forth above without supporting briefs having been filed.

If oral argument is ordered, the motion will be deemed submitted at the close of argument unless the court orders additional briefs, in which case the motion will be deemed submitted as of the date designated as the time for filing the final brief.

(e) In the event of conflict, the Montana Rules of Civil Procedure shall control. Time computation shall be governed by Rule 6(a), M.R.Civ.P.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 3. Ex parte matters.

(a) Extensions of time to further plead, file briefs, continue a hearing on a motion and other permissible ex parte matters, may be granted by order of the court upon written application.

(b) Prior to the issuance of an ex parte order, the attorney seeking such order must file a written certification with the court declaring that opposing counsel has been contacted and given reasonable notice of:

(A) the time and place of the ex parte conference or meeting;
(B) the substance of the order sought;
(C) whether counsel opposes the motion.

(c) All requests for extension of time or continuance or other ex parte matters shall be accompanied by an appropriate form or order, with sufficient copies for the clerk to mail to adverse parties.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 4. Filing of discovery.

(a) Depositions upon oral or written examinations, interrogatories and answers thereto, requests for production of documents and responses thereto, requests for admissions and responses thereto, shall not be routinely filed. When any motion is filed making reference to discovery, the party filing the motion shall submit with the motion relevant unfiled documents.

(b) The pre-trial order shall identify all those portions of depositions, interrogatories, requests for admissions, and answers and responses thereto that the parties intend to introduce into evidence.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 5. Pre-trial order and pre-trial conference.

(a) Pre-trial. Unless otherwise ordered by the court, a pre-trial conference shall be held in all contested civil cases.

(b) Not later than five days prior to the pre-trial conference, plaintiff's counsel shall convene a conference of all counsel for the purpose of preparing a pre-trial order. The proposed pre-trial order shall be presented for signature at the pre-trial conference. In the event of a dispute as to the contents of the order, such dispute shall be presented to the judge for resolution at the pre-trial conference.

(c) Pre-trial order. The pre-trial order shall be substantially in the following form:

(TITLE OF COURT AND CAUSE)

Pursuant to Rule 16 of the Montana Rules of Civil Procedure, a pre-trial conference was held in the above-entitled cause on the ..... day of ....., 19.., at ..... o'clock ...m.

. . . . represented the plaintiff(s).
. . . . represented the defendant(s).
. . . .
. . . . (other appearances) were also present.

AGREED FACTS

The following facts are admitted, agreed to be true, and require no proof:

(Here enumerate all agreed facts, including facts admitted in the pleadings.)

PLAINTIFF'S CONTENTIONS

Plaintiff's contentions are as follows:

1.
2.

DEFENDANT'S CONTENTIONS

1.
2.

EXHIBITS

Attached to the pre-trial order are exhibit lists identifying by number and brief description each exhibit and stating any objections to the exhibits. Any exhibit offered at the trial to which no objection was made in the pre-trial order will be admitted into evidence.

WITNESSES

The following witnesses and no others will (may) be called to testify except on rebuttal:

Plaintiff

1.
2.

Defendant

1.
2.

ISSUES OF FACT

The following issues of fact, and no others, remain to be litigated upon the trial: (Here specify each issue.)

1.
2.

ISSUES OF LAW

The following issues of law, and no others, remain to be litigated upon the trial: (Here set forth a concise statement of each.)

1.
2.

DISCOVERY

The final pre-trial order shall refer to all those portions of depositions upon oral examination and interrogatories, requests for admissions, and answers and responses that the parties intend to introduce into evidence. Any objections to the use of the above documents shall be stated, and if not stated, shall be deemed waived. (Because this rule relates to filing and is designed to consolidate in one place all of the fruits of discovery and because there can be no surprise element involved, the court shall be liberal in permitting the amendment of the pre-trial order to include any material not originally listed.)

ADDITIONAL PRE-TRIAL DISCOVERY

(Here specify any additional discovery contemplated by either party and the time within which such discovery will be completed.)

STIPULATIONS

(Here include any stipulations in addition to the agreed facts set forth above.)

DETERMINATION OF LEGAL QUESTIONS IN ADVANCE OF TRIAL

It was agreed that the following legal issues should be determined by the court in advance of the trial.

(Here specify issues and make provision for filing briefs with respect to such issues.)

ADDITIONAL ISSUES

Additional issues to be determined and/or addressed include:
order of proof where there is a counterclaim;
attorney's fees testimony and/or proof;
time of filing and service of trial briefs and other issues.

JURY SELECTION AND PROCESS

Order and method of selection, stipulation that jury will be selected or drawn, numbering of panel, number of challenges, time to file instructions, length of time on voir dire.

TRIAL

It is estimated that the case will require ..... hours/days for trial.

The case will be tried before the court with (without) a jury.

IT IS HEREBY ORDERED that this pre-trial order shall supersede the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

IT IS HEREBY ORDERED that all pleadings herein shall be amended to conform to this pre-trial order.

DATED this ..... day of ...., 19...

. . . .
District Judge

Approved as to form and content.

. . . .
Attorney for Plaintiff

. . . .
Attorney for Defendant

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 6. Briefs.

All briefs presented to the court at any time will be filed with the court and must forthwith be served on all opposing counsel.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 7. Jury instructions and verdict forms.

(a) Submission. All proposed jury instructions and verdict forms must be delivered to the court in duplicate and a copy served upon all opposing parties at the time fixed in the pre-trial order. Thereafter, additional instructions may be allowed to prevent manifest injustice.

(b) Citation of authorities. Each proposed instruction shall contain at the bottom the source thereof and a citation of authorities, if any, supporting the statement of law therein.

(c) Form. Each instruction shall be on 8 ½" X 11" paper and shall, after the citation of authorities, indicate the party on whose behalf it is requested and be numbered consecutively. One copy of the instructions filed with the court shall not be firmly bound together.

(d) Request for special findings by jury. Whenever a party desires special findings by a jury he shall file with the court and serve a copy upon all opposing parties, in writing, the issues or questions of fact upon which such findings are requested, in proper form for submission to the jury.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 8. Findings and conclusions.

In all matters where the court must enter findings of fact and conclusions of law pursuant to Rule 52, M.R.Civ.P., all parties shall file with the court and serve upon opposing counsel, at least five days prior to the scheduled trial or hearing, proposed findings of fact and conclusions of law. Failure to file proposed findings of fact and conclusions of law in a timely manner shall be cause for appropriate sanction, including removal of the case from the trial calendar, dismissal or granting of a judgment, precluding the offending party from presentation of evidence or objecting to evidence submitted by the other party, or such other action as the court deems appropriate. Post-trial amended and supplemental findings of fact and conclusions of law may be submitted in appropriate circumstances and only upon order of the court.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 9. Juror questionnaire.

All jurors are requested to complete a questionnaire, the form of which is on file with the clerk in his general order file and which contains basic vital statistics and other pertinent information. The completed questionnaires will be available for examination or copying by counsel in the clerk's office in advance of trial and should be used so as to expedite the examination of jurors. The attorneys shall not unduly reiterate the information contained in the questionnaires during their voir dire examination.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 10. Death or removal of attorney.

(a) Whenever an attorney representing a party to an action, or in another civil proceeding of any kind, is removed, withdraws or ceases to act as such, said attorney must inform the court and all other parties of the full name and address of his client and any other information which the court may find appropriate to assist in contacting said party.

(b) When the attorney representing a party to an action or proceeding dies, is removed, withdraws, or ceases to act as such, that party, before any further proceedings are had against him must be given notice by any adverse party:

(1) That such party must appoint another attorney or appear in person, and

(2) The date of the trial or of the next hearing or action required in the case, and

(3) That if he fails to appoint an attorney or appear in person by a date certain, which may not be less than twenty days from the date of the notice, the action or other proceeding will proceed and may result in a judgment or other order being entered against him, by default or otherwise.

(c) Such notice may be by personal service or by certified mail to said party's last known address.

(d) If said party does not appoint another attorney or appear in person within twenty days of the service or mailing of said notice, the action may proceed to judgment. However, copies of all papers and documents required to be served by these rules and the Rules of Civil Procedure shall be mailed to said party at his last known address.

(e) In addition to the foregoing requirements of Rule 10 and before any change or substitution of attorney is effective, whether such change or substitution is occasioned by the death of the attorney or by his removal, withdrawal, ceasing to act, suspension or disbarment, the requirements of sections 37-61-403, 37-61-404 and 37-61-405, MCA, shall have been fully satisfied.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 11. Judgments and decrees.

Whenever a judgment or decree is signed by the presiding judge, it shall be delivered to the clerk and immediately filed in the records of the court, and the fee required by law shall be forthwith paid to the clerk. Failure of counsel to observe this rule shall be deemed a contempt of court.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 12. Exhibits.

(a) Every exhibit placed on file or offered in evidence shall be held in the custody of the clerk. Unless there be good reason why the original of an exhibit should be retained, upon application, the court may order a copy filed in its place. Public records offered in evidence may be withdrawn at the conclusion of the hearing on order of the court.

(b) Exhibits may be withdrawn by the party offering them thirty days after a judgment has become final. Forty-five days after a judgment has become final, the clerk may apply to the court for an order to dispose of exhibits and shall notify counsel of record of said application. Twenty days after mailing of said notice, the court may enter its order authorizing the clerk to dispose of exhibits.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 13. Regulation of attorneys not admitted to practice in Montana.

An attorney seeking to be admitted to practice before this court on a particular case who is not admitted to the Bar of Montana and who is authorized to practice law in the highest courts of another state must, at the time of his/her first appearance in a district court in Montana or within ten days thereafter and before any further proceedings are had in the matter, join with, of record, an attorney who is admitted to practice in Montana and who is a resident of Montana.

In order to help secure the just, speedy, and inexpensive determination of every action, such local counsel must be furnished with all factual, evidentiary, and legal information necessary to act on behalf of the party and must also be vested with full and complete authority to act on behalf of and bind the party in all matters connected with the litigation.

A failure of local counsel to take any action required by the Rules of Civil Procedure or these rules by lack of authority shall, for the purpose of imposing sanctions, be treated as a refusal to act.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 14. Local rules allowed.

Nothing in these rules shall be construed as limiting the power of the district courts from promulgating rules that do not conflict with these rules.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

CHAPTER 20

RULES OF CIVIL PROCEDURE

I. Scope of Rules — One Form of Action

Rule

1. Scope of rules.
2. One form of action.

II. Commencement of Action — Service of Process, Pleadings, Motions, and Orders

3. Commencement of action.
4. Persons subject to jurisdiction — process — service.
    A. Definition of person.
    B. Jurisdiction of persons.
        (1) Subject to jurisdiction.
        (2) Acquisition of jurisdiction.
    C. Process.
        (1) Summons — issuance.
        (2) Summons — form.
    D. Service.
        (1) By whom served.
        (2) Personal service within the state.
        (3) Personal service outside the state.
        (4) Other service.
        (5) Service by publication — when permitted — effect — manner — proof.
            (a) When permitted.
            (b) Effect of service by publication.
            (c) Filing of pleading and affidavit for service by publication; and order for publication.
            (d) Number of publications.
            (e) Mailing summons and complaint.
            (f) Time when first publication or service outside state must be made.
            (g) When service by publication or outside state complete.
            (h) Additional information to be published.

- (6) (a) Service on secretary of state.
  - (b) Continuance to allow defense.
- (7) Amendment.
- (8) Proof of service.
- (9) Contents of affidavit of service.
- (10) Procedure where only part of defendants are served.

5. Service and filing of pleadings and other papers.
   - (a) Service — when required.
   - (b) Service — how made.
   - (c) Service — numerous defendants.
   - (d) Filing; certificate of service.
   - (e) Filing with the court defined.
   - (f) Proof of service.
6. Time.
   - (a) Computation.
   - (b) Enlargement.
   - (c) Unaffected by expiration of term.
   - (d) For motions — affidavits.
   - (e) Additional time after service by mail.

III. Pleadings and Motions

7. Pleadings allowed — form of motions.
   - (a) Pleadings.
   - (b) Motions and other papers.
   - (c) Demurrers, pleas, etc., abolished.
8. General rules of pleading.
   - (a) Claims for relief.
   - (b) Defenses — form of denials.
   - (c) Affirmative defenses.
   - (d) Effect of failure to deny.
   - (e) Pleading to be concise and direct — consistency.
   - (f) Construction of pleadings.
9. Pleading special matters.
   - (a) Capacity.
   - (b) Fraud, mistake, condition of the mind.
   - (c) Conditions precedent.
   - (d) Official document, act, ordinance or statute.
   - (e) Judgment.
   - (f) Time and place.
   - (g) Special damage.
10. Form of pleadings.
    - (a) Caption — names of parties.
    - (b) Paragraphs — separate statements.
    - (c) Adoption by reference — exhibits.
11. Signing of pleadings, motions, and other papers — sanctions.
12. Defenses and objections — when and how presented — by pleading or motion — motion for judgment on pleadings.
    - (a) When presented.
    - (b) How presented.
    - (c) Motion for judgment on the pleadings.
    - (d) Preliminary hearings.
    - (e) Motion for more definite statement.
    - (f) Motion to strike.
    - (g) Consolidation of defenses in motion.
    - (h) Waiver or preservation of certain defenses.
13. Counterclaim and cross-claim.
    - (a) Compulsory counterclaims.
    - (b) Permissive counterclaims.
    - (c) Counterclaim exceeding opposing claim.
    - (d) Counterclaim against the state.

  (e) Counterclaim maturing or acquired after pleading.
  (f) Omitted counterclaim.
  (g) Cross-claim against coparty.
  (h) Joinder of additional parties.
  (i) Separate trials — separate judgment.
14. Third-party practice.
  (a) When defendant may bring in third party.
  (b) When plaintiff may bring in third party.
15. Amended and supplemental pleadings.
  (a) Amendments.
  (b) Amendments to conform to the evidence.
  (c) Relation back of amendments.
  (d) Supplemental pleadings.
16. Pretrial conferences — scheduling — management.
  (a) Pretrial conferences — objectives.
  (b) Scheduling and planning.
  (c) Subjects to be discussed at pretrial conferences.
  (d) Final pretrial conference.
  (e) Pretrial orders.
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IV. Parties

17. Parties plaintiff and defendant — capacity.
  (a) Real party in interest.
  (b) Capacity to sue or be sued.
  (c) Infants or incompetent persons.
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Appendix of Forms

Form
1. Summons — official form in the district court of the .... judicial district of the state of Montana, in and for the county of .....
2. Complaint on a promissory note.
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4. Complaint for goods sold and delivered.
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9. Complaint for negligence where plaintiff is unable to determine definitely whether the person responsible is C.D. or E.F. or whether both are responsible and where plaintiff's evidence may justify a finding of willfulness or of recklessness or of negligence.
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11. Complaint for specific performance of contract to convey land.
12. Complaint on claim for debt and to set aside fraudulent conveyance under Rule 18(b).
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Chapter Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.

Montana Rules of Civil Procedure applicable in District Court, 2-9-311.

Courts and judicial officers generally, Title 3, ch. 1.

Adoption of M.R.Civ.P., Title 3, ch. 2, part 7.

Supreme Court to make procedural rules, 37-61-307.

Attorney's or litigant's liability for excess costs when he unreasonably multiplies proceedings, 37-61-421.

Application of M.R.Civ.P. to marriage proceedings, 40-1-105.

Application of M.R.Civ.P. to proceedings for divorce and child support, 40-4-103.

Application of M.R.Civ.P. to Uniform Parentage Act, 40-6-115.

Application of M.R.Civ.P. to proceedings for grandparent visitation, 40-9-101.

Application of M.R.Civ.P. to abuse, neglect, and dependency petitions, 41-3-401, 41-3-403.

Application of M.R.Civ.P. to actions for attorney's fees in discrimination cases, 49-2-505.

Application of M.R.Civ.P. to actions to enjoin violations of state or municipal building codes, 50-60-109.

Application of M.R.Civ.P. to hearings for the developmentally disabled, 53-20-125, 53-20-127.

Application of M.R.Civ.P. to hearings on petition for commitment of the mentally ill, 53-21-126.

Application of M.R.Civ.P. to actions on bond of motor vehicle owners, 61-6-137.

Application of M.R.Civ.P. to proceedings under the Uniform Probate Code, 72-1-207.

Application of M.R.Civ.P. to actions against Hail Insurance Board, 80-2-243.

Application of M.R.Civ.P. to proceedings to declare appropriation rights abandoned, 85-2-405.

I. Scope of Rules — One Form of Action

Rule 1. Scope of rules. These rules govern the procedure in the district courts of the state of Montana in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81; provided, however, that the discovery procedures set forth in Rules 26 through 37, inclusive, shall be applicable to proceedings in probate. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

History: En. Sec. 1, Ch. 13, L. 1961.

Cross-References

Probate law, Title 72, ch. 1 through 5.

Rule 2. One form of action. There shall be one form of action to be known as "Civil Action."

History: En. Sec. 2, Ch. 13, L. 1961.

Cross-References

One form of civil action, 25-1-101.

II. Commencement of Action — Service of Process, Pleadings, Motions, and Orders

Rule 3. Commencement of action. A civil action is commenced by filing a complaint with the court.

History: En. Sec. 3, Ch. 13, L. 1961.

Cross-References

When action considered pending, 25-1-103.

When action commenced, 27-2-102.

Rule 4. Persons subject to jurisdiction — process — service

Cross-References

Service of process and other papers, Title 25, ch. 3.

Rule 4A. Definition of person. As used in this rule, the word "person," whether or not a citizen or resident of this state and whether or not organized under the laws of this state, includes an individual whether operating in the individual's own name or under a trade name; an individual's agent or personal representative; a corporation; a business trust; an estate; a trust; a partnership; an unincorporated association; and any two or more persons having a joint or common interest or any other legal or commercial entity.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Definition of person, 1-1-201.

Rule 4B. Jurisdiction of persons. (1) Subject to jurisdiction. All persons found within the state of Montana are subject to the jurisdiction of the courts of this state. In addition, any person is subject to the jurisdiction of the courts of this state as to any claim for relief arising from the doing personally, through an employee, or through an agent, of any of the following acts:

(a) the transaction of any business within this state;

(b) the commission of any act which results in accrual within this state of a tort action;

(c) the ownership, use or possession of any property, or of any interest therein, situated within this state;

(d) contracting to insure any person, property or risk located within this state at the time of contracting;

(e) entering into a contract for services to be rendered or for materials to be furnished in this state by such person; or

(f) acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within this state, or as personal representative of any estate within this state.

(2) Acquisition of jurisdiction. Jurisdiction may be acquired by our courts over any person through service of process as herein provided; or by the voluntary appearance in an action by any person either personally, or through an attorney, or through any other authorized officer, agent or employee.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Subject matter jurisdiction of District Courts, 3-5-302.

Lack of jurisdiction as defense, Rule 12(b), M.R.Civ.P.

Rule 4C. Process. (1) Summons — issuance. Upon the filing of the complaint, the clerk shall forthwith issue a summons, and shall deliver the summons either to the sheriff of the county in which the action is filed, or to the person who is to serve it, or upon request, to the attorney for said party who shall thereafter be responsible to see that the summons is served in the manner prescribed by these rules. Upon request, separate or additional summons shall issue against any parties designated in the original action, or against any additional parties who may be brought into the action.

(2) Summons — form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint. In an action brought to quiet title to real estate, there shall be added to the foregoing, the following: "This action is brought for the purpose of quieting title to land situated in ... County, Montana, and described as follows: (Here insert descriptions of land.)." For exceptions to this form of summons see 4D(4) "Other service," set forth hereinafter.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

"Process" defined, 25-3-101.

Designating unknown persons as defendants, 25-3-504.

Summoning joint debtors not originally served, 25-15-101.

Summons in Municipal Courts, 25-30-103.

Summons in partition proceedings, 70-29-110.

Rule 4D. Service. (1) By whom served. (a) Service of all process shall be made in the county where the party to be served is found by a sheriff, deputy sheriff, constable, or any other person over the age of 18 not a party to the action.

(b) (i) A summons and complaint may also be served upon a defendant who is an individual other than a minor or an incompetent person or upon a domestic or foreign corporation or partnership or other unincorporated association by mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing the summons and complaint, service of such summons and complaint shall be made by one of the persons mentioned in Rule 4D(1)(a) in the manner prescribed by Rule 4D(2) and Rule 4D(3).

(ii) Unless good cause is shown for not doing so, the court shall order the payment of costs of the personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons.

(iii) The notice and acknowledgment of receipt of summons and complaint shall be signed and dated. Service of summons and complaint will be deemed complete on the date of signature of the defendant as shown on the acknowledgment.

(2) Personal service within the state. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

(b) Upon a minor over the age of 14 years, by delivering a copy of the summons and complaint to the minor personally, and by leaving a copy thereof at the minor's dwelling house or usual place of abode with some adult of suitable discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(c) Upon a minor under the age of 14 years, by delivering a copy of the summons and complaint to the minor's guardian, if the minor has one within the state, and if not, then to the minor's father or mother or other person or agency having the minor's care or control, or with whom the minor resides, or if service cannot be made upon any of them, then as provided by order of the court.

(d) Upon a person who has been adjudged of unsound mind by a court of this state, or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to the person's guardian, if there be a guardian residing in this state appointed and acting under the laws of this state. If there be no such guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a court of this state, such party may be brought into court by service of process personally upon that party. The court may also stay any action pending against a person on learning that such person is of unsound mind.

(e) Upon a domestic corporation, partnership or other unincorporated association, or upon a foreign corporation, partnership or other unincorporated association, established by the laws of any other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the claim for relief accrued: (i) by delivering a copy of the summons and complaint to an officer, director, superintendent or managing or general agent, or partner, or associate for such corporation, partnership, or association; or by leaving such copies at the office or place of business of the corporation, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to the registered agent of said corporation named on the records of the secretary of state, or to any other agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the corporation, partnership, or unincorporated association within this state with the person in charge of such office; or (iv) if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation and its stockholders or members.

(f) When a claim for relief is pending in any court of this state against a corporation organized under the laws of this state, or against a corporation organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in Montana; or against a corporation organized under the laws of any other state or country which is subject to the jurisdiction of the courts of this state under the provisions of Rule 4B above, even though such corporation has never qualified to do business in Montana; or against a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana; and none of the persons designated in D(2)(e) immediately above can with the exercise of reasonable diligence be found within Montana, the party causing summons to be issued shall exercise reasonable diligence to ascertain the last known address of any such person. Upon the filing with the clerk of court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in D(2)(e) can after due diligence be found within Montana upon whom service of process can be made, and reciting the last known address of any such person, or reciting that after the exercise of reasonable diligence no such address for any such person could be found, and there has also been deposited with the said clerk the sum of $5 to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive said service, then the clerk of court shall issue an order directing process to be served upon the secretary of state of the state of Montana or, in the secretary of state's absence from the secretary of state's office, upon the deputy secretary of state of the state of Montana. Such affidavit shall be sufficient evidence of the diligence of inquiry made by affiant, if the affidavit recites that diligent inquiry was made, and the affidavit need not detail the facts constituting such inquiry. Whenever service is also to be made through publication as provided in 4D(5), or upon other persons as provided in 4D(6), the affidavit herein required may be combined in the same instrument with the affidavit required under 4D(5)(c) and 4D(6). The said clerk of court shall then mail to the secretary of state the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service, to the office of the secretary of state. The secretary of state shall mail copy of the summons and complaint by certified or registered mail with a return receipt requested to the last known address of any of the persons designated in D(2)(e) above, if known, or, if none such is known and it is a corporation not organized in Montana, to the secretary of state of the state in which such corporation was originally incorporated, if known; and the secretary of state shall make a return as hereinafter provided under Rule 4D(6). When service is so made, it shall be deemed personal service on such corporation, and the said secretary of state, or a deputy when the secretary is absent from the secretary of state's office, is hereby appointed agent of such corporation for service of process in cases hereinbefore mentioned. In any action where due diligence has been exercised to locate and serve any of the persons designated in D(2)(e) above, service shall be deemed complete upon said corporation regardless of the receipt of any return receipt or advice of refusal of the addressee to receive the process mailed, as is hereinafter required by 4D(6); provided, however, that except in those actions where any of the persons designated in D(2)(e) above have been located and served personally as hereinabove provided, then service by publication shall also be made as provided hereafter in 4D(5)(d) and 4D(5)(h); the first publication must be made within 60 days from the date the original summons is mailed to the secretary of state as herein provided, and if said first publication is not so made, the action shall be deemed dismissed as to any such party intended to be served by such publication; and service shall be complete upon the date of the last publication of summons.

When service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation, service of all other notices required by law to be served in such action may be served upon the secretary of state.

(g) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor or head of the legislative department thereof.

(h) Upon the state, or any state board or state agency, by delivering a copy of the summons and complaint to the attorney general and to any other party which may be prescribed by statute.

(i) Upon an estate by delivering a copy of the summons and complaint to the personal representative thereof; upon a trust by delivering a copy of the summons and complaint to any trustee thereof.

(3) Personal service outside the state. Where service upon any person cannot, with due diligence, be made personally within this state, service of summons and complaint may be made by service outside this state in the manner provided for service within this state, with the same force and effect as though service had been made within this state. Where service by publication is permitted as hereinafter provided, personal service of a summons and complaint upon the defendant out of the state shall be equivalent to and shall dispense with the procedures and the publication and mailing provided for hereafter in 4(5)(c), 4(5)(d) and 4(5)(e) of this rule.

(4) Other service. All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court or a citation by the court made pursuant thereto provides for the service of a notice or of an order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions hereafter prescribed in D(5)(h), and with the provisions of 33-1-603, 33-1-613, 33-1-614, 33-2-314, 33-2-315, 70-28-207, 70-28-208, 70-28-209, and 70-28-212, Montana Code Annotated, when the action pertains to the provisions of such sections.

(5) Service by publication — when permitted — effect — manner — proof.

(a) When permitted. A defendant, whether known or unknown, who has not been served under the foregoing subsections of this rule can be served by publication in the following situations only:

(i) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest therein. This subsection shall apply whether any such defendant is known or unknown.

(ii) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real or personal property within this state.

(iii) When the action is for dissolution or for a declaration of invalidity of a marriage of a resident of this state or for modification of a decree of dissolution granted by a court of this state.

(iv) When the defendant has property within this state which has been attached or has a debtor within this state, who has been garnished. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subsections (5)(a)(i), (5)(a)(ii), and (5)(a)(iii) herein.

(b) Effect of service by publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree which will adjudicate any interest of such defendant in the status, property, or thing acted upon, but it may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of pleading and affidavit for service by publication; and order for publication. Before service of the summons by publication is authorized in any case, there shall be filed with the clerk in the district court of the county in which the action is commenced (i) a pleading setting forth a claim in favor of the plaintiff and against the defendant in one of the situations defined in (5)(a) above; and (ii) in situations defined in (5)(a)(i), (5)(a)(ii), (5)(a)(iii), upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals defendant's person to avoid the service of summons; or, if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can, after due diligence, be found within the state; or, if the defendant is an unknown claimant, by showing that the affiant has made diligent search and inquiry for all persons who claim, or might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and that the affiant has specifically named as defendants in such action all such persons whose names can be ascertained; such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry, and if desired, it may be combined in one instrument with the affidavit required under 4D(2)(f), or 4D(6); and (iii) in the situation defined in (5)(a)(iv) above, there must be first presented to the court proof that a valid attachment or garnishment has been effected. Upon complying herewith, the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the clerk of the court.

(d) Number of publications. Service of the summons by publication may be made by publishing the same three times, once each week for 3 successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county, and if no newspaper is published in such county then in a newspaper published in an adjoining county and having a general circulation therein.

(e) Mailing summons and complaint. A copy of the summons for publication and complaint, at any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, shall be deposited in some post office in this state, postage prepaid, and directed to the defendant at defendant's place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation, and personal service cannot with due diligence be effected within Montana on any of the persons designated in D(2)(e) above, then service may be completed on said corporation by service upon the secretary of state in the manner, and following the procedure outlined in D(2)(f) above.

(f) Time when first publication or service outside state must be made. The first publication of summons, or personal service of the summons and complaint upon the defendant out of the state, must be made within 60 days after the filing of the affidavit for publication. If not so made, the action shall be deemed dismissed as to any party intended to be served by such publication.

(g) When service by publication or outside state complete. Service by publication is complete on the date of the last publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, on the date of such service.

(h) Additional information to be published. In addition to the form of summons prescribed above in "C. Process, (2) Summons—form," the published summons shall state in general terms the nature of the action, and in all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon real property is involved, or affected, or brought into question, the publication shall also contain a description of the real property involved, affected or brought into question thereby, and a statement of the object of the action.

(6) (a) Service on secretary of state. Whenever service is to be made upon certain corporations as provided hereinabove in D(2)(f) and D(5)(e), the requirements of said D(2)(f) must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or the party's attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post-office address of the person to be served, and shall file such affidavit with the clerk of court in which such claim for relief is pending, accompanied by sufficient copies of the affidavit, summons and complaint for service upon the secretary of state, and there has also been deposited with the clerk of court in which such claim for relief is pending the sum of $10 to be paid to the secretary of state as a fee for each address of said defendants for whom the secretary of state is to receive such service; then the clerk shall forward the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, and one copy of the summons attached to copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee, to the office of the secretary of state.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state or a deputy to the party to be served at that party's last known address, marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee, except in those cases where compliance is excused under the provisions of D(2)(f) above. The date upon which the secretary of state receives said return receipt, or receives advice by the postal authority that delivery of said registered or certified mail was refused by the addressee, shall be deemed the date of service.

As an alternative to sending the summons and complaint by registered or certified mail, as herein provided, the secretary of state, or a deputy, may cause copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D(1), (2) or (3) of this rule.

The secretary of state, or a deputy, shall make an original and two copies of an affidavit reciting: (1) the fact of service upon the secretary of state by the clerk of court, including the day, and hour of such service; (2) the fact of mailing a copy of the summons and complaint and notice to the defendant, including the day and hour thereof, except in those cases where the secretary of state is relieved from doing so under the provisions of D(2)(f) in which cases the affidavit shall so recite; and (3) the fact of receipt of a return from the postal department including the date, and hour thereof, and attaching to the affidavit a copy of such return. The secretary of state, or a deputy, shall then transmit the original summons, and original affidavit along with copy of the notice to the defendant where such notice was required, to the clerk of court in which the claim for relief is pending, and it shall be filed in the claim for relief by said clerk of court; and the secretary of state shall also transmit to the attorney for the plaintiff copy of the affidavit of the secretary of state along with copy of the notice to the defendant where such notice was required. The secretary of state shall keep on file in the secretary of state's office a copy of the summons, a copy of the affidavit served on the secretary of state by the clerk of court, and a copy of the affidavit executed and issued by the secretary of state.

(b) Continuance to allow defense. In any of the cases provided for in Rule 4D(2)(f) above, or provided for hereinabove in 4D(6)(a), the court in which the claim for relief is pending may order such continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(8) Proof of service. Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(a) If served by the sheriff or other officer, the sheriff's or other officer's certificate thereof;

(b) If by any other person, that person's affidavit thereof;

(c) In case of publication an affidavit of the publisher and an affidavit of the deposit of a copy of the summons and complaint in the post office as required by law, if the same shall have been deposited; or

(d) The written admission of the defendant showing the date and place of service.

(e) If service is made under Rule 4D(1)(b) above, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.

The certificate or affidavit of service mentioned in this subdivision must state the time, date, place, and manner of service.

(9) Contents of affidavit of service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by law, the affidavit of service when made, shall state that the person so serving is of legal age, and the date and place of making the service. It also shall state that the person making such service knew the person served to be the person named in the papers served and the person intended to be served.

(10) Procedure where only part of defendants are served. If the summons is served on one or more, but not all, of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served, and may at any time thereafter have a summons against

the defendant not served with the first process to cause that defendant to appear in said court to show cause why that defendant should not be made a party to such judgment. Upon such defendant being duly served with such process, the court shall hear and determine the matter in the same manner as if such defendant had been originally brought into court, and such defendant shall also be allowed the benefit of any payment or satisfaction which may have been made on the judgment before recovered.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In (6)(a) increased fee payable to Secretary of State from $5 for each defendant to $10 for each address of defendants; and made minor changes in style.

Cross-References

Service in national parks, 2-1-205, 2-1-207.

Service on Indian land, 2-1-307.

Service of process on state, 2-9-313.

Process of District Courts, 3-5-304.

Registration of process servers, Title 25, ch. 1, part 11.

Service of process and other papers, Title 25, ch. 3.

Secretary of State's fees for accepting service of process, 25-10-206.

No charge for copies furnished by party, 25-10-402.

Permissible use for affidavits, 26-1-1002.

Affidavit of printer or publisher as evidence of publication, 26-1-1011.

Corporate stock — service on Secretary of State, 27-18-410.

Duty of Secretary of State — fees, 27-18-411.

Service of Writ of Certiorari, 27-25-204.

Service of Writ of Mandamus, 27-26-205.

Service of summons in quo warranto action, 27-28-202, 27-28-203.

Commissioner of insurance as attorney for service of process, 33-1-601.

Service of process on foreign, alien, and domestic insurance corporations, 33-1-602.

Serving process on insurance companies, 33-1-603.

Service of process on foreign corporation, 35-1-1034.

Service of summons in action for forcible entry and unlawful detainer, 70-27-114.

Action for partition of real property, manner of service, 70-29-111.

Rule 5. Service and filing of pleadings and other papers

Rule 5(a). Service — when required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

History: En. Sec. 5, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Service of papers after defendant's appearance, Title 25, ch. 3, part 4.

Service of notice of intent to institute forfeiture proceedings, 44-12-201.

Rule 5(b). Service — how made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or the party or by mailing it to the attorney or the party at the attorney's or the party's last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or the party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at that person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

History: En. Sec. 5, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Service by an officer, Title 25, ch. 3, part 2.

Rule 5(c). Service — numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

History: En. Sec. 5, Ch. 13, L. 1961.

Rule 5(d). Filing; certificate of service. All papers after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service except that depositions upon oral examinations, depositions upon written questions, interrogatories, requests for documents, requests for admissions, and answers and responses shall not be routinely filed. However, when any motion is filed relating to discovery, the parties filing the motion shall at the same time attach to the motion all of the documents relevant to the motion if the documents have not been previously filed. If for any reason a party believes that any of the foregoing named documents should be filed, the party may make an ex parte request that the document be filed, stating the reasons for filing. Proof of service of a notice to take a deposition shall continue to be filed.

History: En. Sec. 5, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Sept. 1, 1988, eff. Nov. 1, 1988; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In first sentence, after "party", inserted "together with a certificate of service" and after "court" deleted "either before service or"; at end of last sentence, after "filed", deleted "in conformance with Rule 45(d)(1)"; and made minor changes in style.

Rule 5(e). Filing with the court defined. The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Papers may be filed by facsimile or other electronic means, provided the original document must be filed with the clerk within five business days of the receipt of the facsimile copy or the filing will be treated as void.

History: En. Sec. 5, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In first sentence, after "filing of", deleted "pleadings and other"; and inserted last sentence concerning facsimile filing.

Rule 5(f). Proof of service. Proof of service shall be made by an affidavit of the party or the party's attorney making service, or by the certificate of the party's resident attorney making service or by an acknowledgment in writing from the party or attorney served, and such affidavit, certificate or acknowledgment shall be filed within 10 days after service. Failure to make proof of service does not affect the validity of the service.

History: En. Sec. 5, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 6. Time

Rule 6(a). Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

History: En. Sec. 6, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Sept. 1, 1988, eff. Nov. 1, 1988.

Cross-References

Computation of time, 1-1-306.

Postponement of day appointed for an action when it falls on a holiday, 1-1-307.

Service of extraordinary writs on legal holidays, 3-5-302.

Computation and extension of time in appellate procedure, Rule 21, M.R.App.P. (see Title 25, ch. 21).

Rule 6(b). Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d), (e) and (g), and 60(b), except to the extent and under the conditions stated in them.

History: En. Sec. 6, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Extension of time, 25-1-301.

Rule 6(c). Unaffected by expiration of term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

History: En. Sec. 6, Ch. 13, L. 1961.

Rule 6(d). For motions — affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

History: En. Sec. 6, Ch. 13, L. 1961.

Rule 6(e). Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, 3 days shall be added to the prescribed period.

History: En. Sec. 6, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

III. Pleadings and Motions

Rule 7. Pleadings allowed — form of motions

Cross-References

Pleadings, motions, and other papers, Title 25, ch. 4.

Rule 7(a). Pleadings. There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; and an answer to a cross-claim; a third-party complaint, if a person who was not an original party is summoned under Rule 14; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

History: En. Sec. 7, Ch. 13, L. 1961.

Cross-References

Sovereignty and style of process, 2-1-101.

Rule 7(b). Motions and other papers. (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

History: En. Sec. 7, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Evidence on motions, Rule 43(e), M.R.Civ.P.

Rule 7(c). Demurrers, pleas, etc., abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

History: En. Sec. 7, Ch. 13, L. 1961.

Cross-References

Exceptions unnecessary, Rule 46, M.R.Civ.P.

Rule 8. General rules of pleading

Cross-References

Pleadings, motions, and other papers, Title 25, ch. 4.

Rule 8(a). Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 8(b). Defenses — form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Sup. Ct. Ord. June 1, 1964, eff. July 1, 1964; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Procedure where answer admits part of plaintiff's claim, 25-4-601.

Rule 8(c). Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Sup. Ct. Ord. June 1, 1964, eff. July 1, 1964.

Cross-References

Compromise or settlement of a debt by unsealed writing, 1-4-207.

Pleading special matters, Title 25, ch. 4, part 3.

Cross-claim to be asserted in answer, 25-4-404.

Complete list of conclusive presumptions, 26-1-601.

Effect of former judgments and orders, Title 26, ch. 3.

Comparative negligence — extent to which contributory negligence bars recovery in action for damages, 27-1-702.

Statutes of Limitations, Title 27, ch. 2.

Arbitration, Title 27, ch. 5.

Accord and satisfaction, Title 28, ch. 1, part 14.

Form, formation, and readjustment of contract, Title 30, ch. 2, part 2.

Remedies for fraud, 30-2-721.

Estoppel applicable to law of partnerships, 35-10-104.

Partner by estoppel, 35-10-308.

Rule 8(d). Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

History: En. Sec. 8, Ch. 13, L. 1961.

Cross-References

Procedure after claims partially admitted, Title 25, ch. 4, part 6.

Effect of admission, Rule 36(b), M.R.Civ.P.

Rule 8(e). Pleading to be concise and direct — consistency. (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motion are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 8(f). Construction of pleadings. All pleadings shall be so construed as to do substantial justice.

History: En. Sec. 8, Ch. 13, L. 1961.

Rule 9. Pleading special matters

Cross-References

Pleading special matters, Title 25, ch. 4, part 3.

Rule 9(a). Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

History: En. Sec. 9, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 9(b). Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

History: En. Sec. 9, Ch. 13, L. 1961.

Rule 9(c). Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

History: En. Sec. 9, Ch. 13, L. 1961.

Cross-References

Types of conditions, 28-1-402.

Mistake and fraud, Title 28, ch. 2, part 4.

Rule 9(d). Official document, act, ordinance or statute. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law. In pleading any ordinance or regulation of any county, city, village, or other political subdivision of this state, or any special, local or private statute, or any right derived therefrom, or the laws of another jurisdiction, it is sufficient to refer to the ordinance, regulation, statute or law by its title and the date of its passage, or by the appropriate designation in the official or recognized compilation thereof.

History: En. Sec. 9, Ch. 13, L. 1961.

Cross-References

Judicial notice of law, Rule 202, M.R.Ev. (see Title 26, ch. 10).

Rule 9(e). Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

History: En. Sec. 9, Ch. 13, L. 1961.

Cross-References

Effect of former judgments and orders, Title 26, ch. 3.

Rule 9(f). Time and place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

History: En. Sec. 9, Ch. 13, L. 1961.

Rule 9(g). Special damage. When items of special damage are claimed, they shall be specifically stated.

History: En. Sec. 9, Ch. 13, L. 1961.

Rule 10. Form of pleadings

Rule 10(a). Caption — names of parties. Every pleading shall contain a caption setting forth the name, district and county of the court, the title of the action, the number of the action, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

History: En. Sec. 10, Ch. 13, L. 1961.

Cross-References

Designation of parties, Title 25, ch. 5, part 1.

Rule 10(b). Paragraphs — separate statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

History: En. Sec. 10, Ch. 13, L. 1961.

Cross-References

Reply to counterclaim or new matter in Municipal Courts, 25-30-104.

Rule 10(c). Adoption by reference — exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

History: En. Sec. 10, Ch. 13, L. 1961.

Cross-References

Copy of written instrument in pleadings, 25-4-202.

Rule 11. Signing of pleadings, motions, and other papers — sanctions. Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

History: **En. Sec. 11, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.**

Cross-References

Verification of pleadings, 25-4-203.

Permissible use of affidavits, 26-1-1002.

Rule 12. Defenses and objections — when and how presented — by pleading or motion — motion for judgment on pleadings

Rule 12(a). When presented. Except as otherwise provided by statute applicable to particular defendants or proceedings, the responsive pleadings shall be served as follows: A defendant shall serve an answer within 20 days after the service of the summons and complaint upon that defendant, or within 20 days after the completion of service of process as provided in Rule 4, unless the court directs otherwise when service of process is made pursuant to Rule 4D(4). A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order or such time as the order otherwise directs. The state, or any state board or state agency shall serve an answer to the complaint within 40 days after service upon the attorney general. Unless a different time is fixed by the court, when a motion permitted by these rules is served, the responsive pleading shall be served within 20 days after notice of the court's action if the court denies the motion or postpones its disposition until trial on the merits, and shall be served within 20 days after the service of the more definite statement if the court grants a motion for a more definite statement.

History: **En. Sec. 12, Ch. 13, L. 1961; amd Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.**

Cross-References

Time for amendment or reply after motion on pleadings, 25-4-204.

Summons in Municipal Courts, 25-30-103.

Rule 12(b). How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to the claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

(i) The cases in which place of trial may be changed are specified in section 25-2-201, Montana Code Annotated.

(ii) If the county designated in the complaint is not the proper county for trial of the action, the defendant must at the time of defendant's first appearance request by motion that the trial be had in the proper county. Every defense in law or fact, to a claim for relief in any pleading which defendant desires to present by way of motion as hereinabove provided must be joined with, or inserted in, the motion requesting a change in the place of trial. If the court in which the action is commenced grants the request for change of venue, that court shall not consider nor pass upon other defenses in law, or fact, presented by the motion, but such shall be considered and decided by the court sitting in the proper county after the transfer has been completed. No request for change of venue is waived by being joined in a motion with other defenses or objections in law or fact.

(iii) Any request for change in place of trial for grounds 2 and 3 of section 25-2-201, Montana Code Annotated, must be presented by motion within 20 days after the answer to the complaint, or to the cross-claim where a cross-claim is filed, or the reply to any answer, in those cases in which a reply is authorized, has been filed; except that whenever at some time more than 20 days after the last pleading has been filed an event occurs which thereafter affords good cause to believe that an impartial trial cannot be had under ground 2 of said section 25-2-201, and competent proof is submitted to the court that such cause of impartiality did not exist within the 20-day period after the last pleading was filed, then the court may entertain a motion to change the place of trial under ground 2 of section 25-2-201 within 20 days after that later event occurs.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Motions and orders when judge absent, 25-4-101.

Transfer when judge unable to hear motion or return of order, 25-4-102.

Vacating or modifying order made without notice, 25-4-103.

Costs of securing witnesses — substitution of judge, 25-10-205.

Motions and other papers, Rule 7(b), M.R.Civ.P.

Evidence on motions, Rule 43(e), M.R.Civ.P.

Findings of fact and conclusions of law unnecessary, Rule 52(a), M.R.Civ.P.

Rule 12(c). Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963.

Rule 12(d). Preliminary hearings. The defenses specifically enumerated (1) - (7) in subdivision (b) of this rule whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision

(c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until trial.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 12(e). Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 12(f). Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 12(g). Consolidation of defenses in motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 12(h). Waiver or preservation of certain defenses. (1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Subject matter jurisdiction of District Courts, 3-5-302.

Pleading special matters, Title 25, ch. 4, part 3.

Jurisdiction of persons, Rule 4B, M.R.Civ.P.

Service of process, Rule 4D, M.R.Civ.P.

Rule 13. Counterclaim and cross-claim

Cross-References

Counterclaim and cross-claim, Title 25, ch. 4, part 4.

Mode of trial upon counterclaim, 25-7-104.

Rule 13(a). Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

History: En. Sec. 13, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 13(b). Permissive counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

History: En. Sec. 13, Ch. 13, L. 1961.

Cross-References

Effect on counterclaim of termination of action, 27-2-408.

Rule 13(c). Counterclaim exceeding opposing claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

History: En. Sec. 13, Ch. 13, L. 1961.

Cross-References

Judgment for excess when plaintiff admits counterclaim, 25-4-602.

Rule 13(d). Counterclaim against the state. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the state of Montana or any of its governmental subdivisions, agencies or officers.

History: En. Sec. 13, Ch. 13, L. 1961.

Cross-References

Sovereign immunity abolished except as provided by statute, Art. II, sec. 18, Mont. Const.

Liability exposure and insurance coverage, Title 2, ch. 9.

Judgments against county or county officers, 25-13-205.

Governmental property exempt from execution, 25-13-613.

Rule 13(e). Counterclaim maturing or acquired after pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

History: En. Sec. 13, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Supplemental pleadings, Rule 15(d), M.R.Civ.P.

Rule 13(f). Omitted counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

History: En. Sec. 13, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 13(g). Cross-claim against coparty. A pleading may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

History: En. Sec. 13, Ch. 13, L. 1961.

Cross-References

Interpleader, Rule 22, M.R.Civ.P.

Rule 13(h). Joinder of additional parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

History: En. Sec. 13, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Misjoinder and nonjoinder of parties, Rule 21, M.R.Civ.P.

Rule 13(i). Separate trials — separate judgment. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b), even if the claims of the opposing party have been dismissed or otherwise disposed of.

History: En. Sec. 13, Ch. 13, L. 1961.

Cross-References

Mode of trial upon counterclaim, 25-7-104.

Rule 14. Third-party practice

Rule 14(a). When defendant may bring in third party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 30 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial; the court may direct a final judgment upon either the original claim or the third-party claim alone in accordance with the provisions of Rule 54(b). A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

History: En. Sec. 14, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Commencement of action, Rule 3, M.R.Civ.P.

Rule 14(b). When plaintiff may bring in third party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

History: En. Sec. 14, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 15. Amended and supplemental pleadings

Rule 15(a). Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

History: En. Sec. 15, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Time for amendment or reply after motion on pleading, 25-4-204.

Rule 15(b). Amendments to conform to the evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

History: En. Sec. 15, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 15(c). Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party to be brought in by amendment, that party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

The requirements of clauses (1) and (2) hereof are satisfied with respect to any city, village, town, school district, county, or public agency, board or officer of such public bodies, and with respect to the state or any state board, agency or officer thereof, to be brought into the action as defendant, if process is served as provided by Rule 4D(2)(g) and (h) for service upon such defendant.

History: En. Sec. 15, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 15(d). Supplemental pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

History: En. Sec. 15, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 16. Pretrial conferences — scheduling — management

Rule 16(a). Pretrial conferences — objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation, and;

(5) facilitating the settlement of the case.

History: **En. Sec. 16, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Rule 16(b). Scheduling and planning. Except in categories of actions exempted by district court rule as inappropriate, the judge shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete discovery.

The scheduling order also may include

(4) the date or dates for conferences before trial, final pretrial conference, and trial; and

(5) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in no event more than 120 days after filing of the complaint. A schedule shall not be modified except by leave of the judge upon a showing of good cause.

History: **En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Rule 16(c). Subjects to be discussed at pretrial conferences. The participants at any conference under this rule may consider and take action with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence;

(5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(6) the advisability of referring matters to a master;

(7) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

(8) the form and substance of the pretrial order;

(9) the disposition of pending motions;

(10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(11) the time for submission of proposed findings of fact and conclusions of law in a non-jury action, or proposed instructions to the jury and the form of verdict in a jury action, and such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

History: En. Sec. 16, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 16(d). Final pretrial conference. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

History: En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 16(e). Pretrial orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

History: En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 16(f). Sanctions. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

History: En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

IV. Parties

Part Cross-References

Parties, Title 25, ch. 5.

Rule 17. Parties plaintiff and defendant — capacity

Cross-References

Capacity to be a party — joinder, Title 25, ch. 5, part 2.

Rule 17(a). Real party in interest. Every action shall be prosecuted in the name of the real party in interest. A personal representative, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the state of Montana so provides, an action for the use or benefit of another shall be brought in the name of the state of Montana. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

History: En. Sec. 17, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Quo warranto, Title 27, ch. 28.

Nuisances, parties, 27-30-103.

Paternity proceedings, parties, 40-6-110.

Forcible entry and detainer, parties, 70-27-111.

Partition, parties, 70-29-104, 70-29-105.

Foreclosure proceedings, parties, 71-1-222.

Rule 17(b). Capacity to sue or be sued. The capacity of persons to sue or be sued shall be determined by appropriate statutory provisions.

History: En. Sec. 17, Ch. 13, L. 1961.

Cross-References

Capacity to be a party — joinder, Title 25, ch. 5, part 2.

Power of foreign corporation to sue and be sued, 32-1-103.

Power of credit union to sue and be sued, 32-3-401.

Power of religious corporation to sue and be sued, 35-3-205.

Power of business trust to sue and be sued, 35-5-103.

Rule 17(c). Infants or incompetent persons. Whenever an infant or incompetent person has a representative, such as a general guardian, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person, or in any case where the court deems it expedient a guardian ad litem may be appointed to represent an infant or incompetent person, even though the infant or incompetent person may have a general guardian and may have appeared by that general guardian.

History: En. Sec. 17, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Guardian ad litem, Title 25, ch. 5, part 3.

Substitution of parties, incompetency, Rule 25(b), M.R.Civ.P.

Right of minor to bring civil action or other proceedings, 27-1-511.

Parties in paternity proceedings, guardian, 40-6-110.

When parental authority ceases, 40-6-234.

Enforcement of minor's rights, 41-1-202.

Appointment of guardian in proceedings for child abuse, neglect, and dependency, 41-3-303, 41-3-401.

Appointment of guardian ad litem in youth court, 41-5-512.

Guardians of minors, Title 72, ch. 5, part 2.

Guardians of incapacitated persons, Title 72, ch. 5, part 3.

Rule 18. Joinder of claims and remedies

Rule 18(a). Joinder of claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims either legal or equitable or both as the party has against an opposing party or coparty.

History: En. Sec. 18, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Pleading inconsistent claims, Rule 8(e), M.R.Civ.P.

Rule 18(b). Joinder of remedies — fraudulent conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money. This rule shall not be applied in tort cases so as to permit the joinder of a liability or indemnity insurance carrier, unless such carrier is by law or contract directly liable to the person injured or damaged.

History: En. Sec. 18, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Availability of remedies, Title 27, ch. 1.

Rule 19. Joinder of persons needed for just adjudication

Cross-References

Capacity to be a party — joinder, Title 25, ch. 5, part 2.

Rule 19(a). Persons to be joined if feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

History: En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 19(b). Determination by court of whenever joinder not feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

History: **En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.**

Rule 19(c). Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

History: **En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.**

Cross-References

Designating unknown persons as defendants, 25-3-504.

Suing a party by a fictitious name, 25-5-103.

Rule 19(d). Exception of class actions. This rule is subject to the provisions of Rule 23.

History: **En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.**

Rule 20. Permissive joinder of parties

Rule 20(a). Permissive joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

History: **En. Sec. 20, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.**

Cross-References

Defendants — adverse claims to real property, 25-5-203.

Joinder of state as defendant in actions affecting title to property, 25-5-204.

Action for accounting for royalty from oil or gas, 82-10-101.

Rule 20(b). Separate trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

History: **En. Sec. 20, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.**

Rule 21. Misjoinder and nonjoinder of parties. Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

History: **En. Sec. 21, Ch. 13, L. 1961.**

Rule 22. Interpleader

Rule 22(a). By joinder, cross-claim or counterclaim. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

History: En. Sec. 22, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 22(b). By substitution. A defendant against whom an action is pending upon a contract, or for specific real or personal property, at any time before answer, upon affidavit that a person not a party to the action and without collusion with the defendant makes against the defendant a demand for the same debt or property, upon due notice to such person and the adverse party, may apply to the court for an order to substitute such person in the defendant's place and to discharge the defendant from liability to either party on the defendant's depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct, and the court, in its discretion, may make the order.

History: En. Sec. 22, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Deposits in court, Title 25, ch. 8.

Affidavits, Title 26, ch. 1, part 10.

Rule 23. Class actions

Rule 23(a). Prerequisites to a class action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 23(b). Class actions maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition: (1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 23(c). Determination by order whether class action to be maintained — notice — judgment — actions conducted partially as class actions. (1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 23(d). Order in conduct of actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2)

requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Order of trial, 25-7-301.

Rule 23(e). Dismissal or compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 23(f). Security for costs. Security for costs and charges, which may be awarded against a representative party, may be required by an opposing party. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the representative party by judgment, or in the progress of the action, not exceeding the sum of $1,000. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking is executed and filed.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Undertaking for security, Title 25, ch. 1, part 4.

Security for costs, Title 25, ch. 10, part 6.

Rule 23.1. Derivative actions by shareholders. In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 23.2. Actions relating to unincorporated associations. An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 24. Intervention

Rule 24(a). Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

History: En. Sec. 24, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 24(b). Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

History: En. Sec. 24, Ch. 13, L. 1961.

Rule 24(c). Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene. When the constitutionality of an act of the legislative assembly affecting the public interest is drawn in question in any action to which neither the state nor any agency or officer thereof is a party, the court shall notify the attorney general of the state and the attorney general may within 20 days thereafter intervene in the same manner on behalf of the state.

History: En. Sec. 24, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Notice to Attorney General, Title 25, ch. 1, part 5.

Service required on Attorney General, Rule 4D(2)(h), M.R.Civ.P.

Attorney General to be notified of constitutional questions, Rule 38, M.R.App.P. (see Title 25, ch. 21).

Rule 25. Substitution of parties

Cross-References

Vacancy and succession, Title 2, ch. 16, part 5.

Substitution of parties, Rule 37, M.R.App.P. (see Title 25, ch. 21).

Right to bring action or assert defense, Title 27, ch. 1, part 5.

When a party dies before action commenced, 27-2-404.

Rule 25(a). Death. (1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(3) After a verdict is rendered or an order for judgment is made in any action, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of action survives by law, and substitution of parties shall be allowed as in other cases.

History: En. Sec. 25, Ch. 13, L. 1961.

Cross-References

Death of party after verdict, no lien, 25-9-103.

Rule 25(b). Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's guardian or may appoint a guardian ad litem for that purpose.

History: En. Sec. 25, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Guardian ad litem, Title 25, ch. 5, part 3.

Infants or incompetent persons, Rule 17(c), M.R.Civ.P.

Guardians of incapacitated persons, Title 72, ch. 5, part 3.

Rule 25(c). Transfer of interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

History: En. Sec. 25, Ch. 13, L. 1961.

Cross-References

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Rule 25(d). Public officers — death or separation from office. (1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

History: En. Sec. 25, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

V. Depositions and Discovery

Rule 26. General provisions governing discovery

Rule 26(a). Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

History: En. Sec. 26, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 26(b). Discovery scope and limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying

on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

History: En. Sec. 26, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Privileges, Title 26, ch. 1, part 8.

Rule 26(c). Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

History: En. Sec. 26, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Private writings, 30-13-136.

Rule 26(d). Sequence and timing of discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

History: En. Sec. 26, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 26(e). Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

History: En. Sec. 26, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Supplemental pleadings, Rule 15(d), M.R.Civ.P.

Rule 26(f). Discovery conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

History: En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 26(g). Signing of discovery requests, responses, and objections. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

History: En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 27. Depositions before action or pending appeal

Rule 27(a). Before action. (1) Petition. A person who desires to perpetuate testimony regarding any matter that may be cognizable in any district court of the state of Montana may file a verified petition in the district court in the county of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: 1, that the petitioner expects to be a party to an action cognizable in a district court of the state of Montana but is presently unable to bring it or cause it to be brought, 2, the subject matter of the expected action and the petitioner's interest therein, 3, the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, 4, the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and 5, the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for an order described in the petition. At least

20 days before the date of hearing the notice shall be served in the manner provided in Rule 4, and for persons not personally served in the manner provided in Rule 4D, who do not appear, an attorney shall be appointed who shall represent them and cross-examine the deponent. If an expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) Order and examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of deposition. If a deposition to perpetuate testimony is taken under these rules it may be used in any action involving the same subject matter subsequently brought in a district court of the state of Montana in accordance with the provisions of Rule 32(a).

History: En. Sec. 27, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 27(b). Pending appeal. If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which the party expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

History: En. Sec. 27, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Time for filing notice of appeal, Rule 5, M.R.App.P. (see Title 25, ch. 21).

Rule 27(c). Perpetuation by petition. This rule does not limit the power of a court to entertain a proceeding to perpetuate testimony.

History: En. Sec. 27, Ch. 13, L. 1961.

Rule 28. Persons before whom depositions may be taken

Rule 28(a). Within the United States. Within the state of Montana, depositions shall be taken before a person authorized by the laws of this state to administer oaths; without the state, but within the United States, or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before a person authorized to administer oaths by the laws of this state, the United States, or of the place where the examination is held; within or without the state of Montana, depositions may also be taken before a person appointed by the court in which the action is pending, which persons so appointed shall have the power to administer oaths and take testimony.

History: En. Sec. 28, Ch. 13, L. 1961.

Cross-References

Officers who may administer oaths, 1-6-101.

Rule 28(b). In foreign countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to letter rogatory. A commission or a letter rogatory shall be issued on application and notice, and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

History: En. Sec. 28, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Officers who may administer oaths, 1-6-101.

Affidavits made in other states — before whom taken, 26-1-1004.

Rule 28(c). Disqualification for interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

History: En. Sec. 28, Ch. 13, L. 1961.

Rule 28(d). Depositions to be used in other states. Whenever the deposition of any person is to be taken in this state pursuant to the laws of another state or the United States or of another country for use in proceedings there, the district court of the county where the witness is to be served, upon proof that notice has been duly served, may issue, pursuant to Rule 45(d), the necessary subpoenas.

History: En. Sec. 28, Ch. 13, L. 1961.

Rule 28(e). Deposition to be taken in sister states and foreign countries for use in this state. Whenever the deposition of any person is to be taken in a sister state or a foreign country, or any other jurisdiction, foreign or domestic, for use in this state, pursuant either to notice or stipulation, the clerk or equivalent officer of any court having jurisdiction at the place where the witness is to be served or the deposition taken, upon proof that notice has been duly served for taking of the deposition or that the parties have stipulated to such taking, may issue the necessary subpoenas or equivalent court instruments to require such witness to attend for the taking of the deposition at the time and place in the sister state or foreign country, or any other jurisdiction, foreign or domestic, designated in the notice or stipulation.

History: En. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969.

Cross-References

Effect of judicial record of another state, 26-3-203.

Rule 29. Stipulations regarding discovery procedure. Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.

History: En. Sec. 29, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 30. Depositions upon oral examination

Cross-References

Securing testimony of witness who is a prisoner, Title 26, ch. 2, part 2.

Duties of witnesses, Title 26, ch. 2, part 3.

Protection of witnesses, Title 26, ch. 2, part 4.

Depositions in criminal proceedings, Title 46, ch. 15, part 2.

Rule 30(a). When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4D, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Deposition of witness upon postponement, 25-4-504.

Rule 30(b). Notice of examination; general requirements — special notice — nonstenographic recording — production of documents and things — deposition of organization — deposition by telephone

— limitations. (1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the district where the action is pending and more than 100 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when the party was served with notice under this subdivision (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The court may upon motion order that the testimony at a deposition be recorded by other than stenographic, audio-visual, or tape recorded means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at the party's own expense.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone. For the purposes of this rule and Rules 28(a), 37(a)(1), 37(b)(1) and 45(d), a deposition taken by telephone is taken in the district and at the place where the deponent is to answer questions propounded to the deponent.

(8) Unless otherwise ordered or stipulated, each deposition shall not last more than eight hours nor take place on more than one day. Additional time may be obtained for good cause by leave of court.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: Inserted (8) limiting time of depositions.

Cross-References

Subpoena for taking depositions, Rule 45(d), M.R.Civ.P.

Subpoenas, Title 26, ch. 2, part 1.

Rule 30(c). Examination and cross-examination — record of examination — oath — objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rules 607, 611(b) and 611(c), Montana Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Officers who may administer oaths, 1-6-101.

Rule 30(d). Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 30(e). Submission to witness — changes — signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 30(f). Certification by officer — exhibits — copies — notice of receipt. (1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly deliver it or send it by registered or certified mail to the party taking the deposition.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its receipt to all other parties.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct.

Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. Sept. 1, 1988, eff. Nov. 1, 1988; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Authentication and identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).

Admissibility of duplicates, copies of certain entries, Rule 1003, M.R.Ev. (see Title 26, ch. 10).

Rule 30(g). Failure to attend or to serve subpoena — expenses. (1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Attorney's fees as costs, Title 25, ch. 10, part 3.

Subpoena for taking depositions, Rule 45(d), M.R.Civ.P.

Rule 30(h). Audio-visual and tape recorded depositions. (1) (a) Any deposition may be recorded by audio-visual or tape recorded means without a stenographic record. Any party may make at the party's own expense a simultaneous stenographic, audio record or tape recording of the deposition. Upon the party's request and at the party's own expense, any party is entitled to an audio-visual or tape recorded copy of the deposition.

(b) If a deposition is taken by means of an audio-visual or tape recording, such recording is an official record of the deposition. A transcript prepared by any court reporter is also an official record of the deposition.

(c) On motion the court, for good cause, may order the party taking, or who took, a deposition by audio-visual or by tape recording to furnish, at the party's expense, a transcript of the deposition.

(2) An audio-visual or tape recorded deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used.

(3) The notice for taking an audio-visual or tape recorded deposition and the subpoena for attendance at that deposition must specify the means, either audio-visual or tape recording, by which the deposition will be taken.

(4) The following procedure must be observed in recording an audio-visual or tape recorded deposition:

(a) The deposition must begin with an oral or written statement on tape or camera which includes:

(i) the operator's name and business address;

(ii) the name and business address of the operator's employer;

(iii) the date, time and place of deposition;

(iv) the caption of the case;
(v) the name of the witness;
(vi) the party on whose behalf the deposition is being taken; and
(vii) any stipulation by the parties.

(b) Counsel shall identify themselves on camera or on tape.

(c) The oath must be administered to the witness on camera or on tape.

(d) If the length of a deposition requires the use of more than one recording unit, the end of each unit and the beginning of each succeeding unit must be announced on camera or on tape.

(e) At the conclusion of a deposition, a statement must be made on camera or on tape that the deposition is concluded. A statement may be made on camera or on tape setting forth any stipulation made by counsel concerning the custody of the audio-visual or the tape recording and exhibits or other pertinent matters.

(f) Depositions must be indexed by a time generator or other adequate indexing device.

(g) An objection must be made as in the case of stenographic depositions.

(h) If the court issues an editing order, the original audio-visual or tape recording must not be altered.

(i) Unless otherwise stipulated by the parties, the original audio-visual or tape recording of a deposition, any copy edited pursuant to an order of the court, and exhibits must be filed forthwith with the clerk of court.

(5) The reasonable expense of recording, editing, and using an audio-visual or tape recorded deposition may be taxed as costs as provided by law.

History: En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 31. Depositions upon written questions

Rule 31(a). Serving questions — notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

History: **En. Sec. 31, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.**

Cross-References

Enlargement of time, Rule 6(b), M.R.Civ.P.

Subpoenas, Title 26, ch. 2, part 1.

Rule 31(b). Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and deliver or mail the deposition to the party taking the deposition, attaching thereto the copy of the notice and the questions received by the officer.

History: **En. Sec. 31, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Sept. 1, 1988, eff. Nov. 1, 1988; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.**

Rule 31(c). Notice of receipt. The party taking the deposition shall give prompt notice of its receipt to all other parties.

History: **En. Sec. 31, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Sept. 1, 1988, eff. Nov. 1, 1988.**

Rule 32. Use of depositions in court proceedings

Rule 32(a). Use of depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness or for any other purpose permitted by the Montana Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in

fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Montana Rules of Evidence.

History: En. Sec. 32, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 32(b). Objections to admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

History: En. Sec. 32, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 32(c). Deleted. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

History: En. Sec. 32, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 32(d). Effect of errors and irregularities in depositions. (1) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition. (A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, or otherwise dealt

with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

History: **En. Sec. 32, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Sept. 1, 1988, eff. Nov. 1, 1988.**

Rule 33. Interrogatories to parties

Rule 33(a). Availability — procedures for use — limitations. Any party may serve upon any other party written interrogatories to be answered by the parties served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. Unless otherwise ordered or stipulated, no party may serve on any other party more than 50 interrogatories in the aggregate. Each subpart shall be counted as a separate interrogatory. Additional interrogatories may be submitted for good cause only by leave of court.

Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to in which event the reasons for objection shall be stated in lieu of an answer. The party answering the interrogatories shall set forth a verbatim recopy of each of the interrogatories, followed by the answer thereto. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

History: **En. Sec. 33, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Sept. 1, 1988, eff. Nov. 1, 1988; amd. Sup. Ct. Ord. Mar. 26, 1993.**

Compiler's Comments

1993 Amendment: At end of first paragraph inserted last three sentences limiting interrogatories.

Rule 33(b). Scope — use at trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

History: **En. Sec. 33, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.**

Cross-References

Montana Rules of Evidence, Title 26, ch. 10.

Rule 33(c). Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and identify, as readily as can the party served, the records from which the answer may be ascertained.

History: En. Sec. 33, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 34. Production of documents and things and entry upon land for inspection and other purposes

Rule 34(a). Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

History: En. Sec. 34, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 34(b). Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

History: **En. Sec. 34, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Rule 34(c). Persons not parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

History: **En. Sec. 34, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Mar. 26, 1993.**

Compiler's Comments

1993 Amendment: Substituted current text concerning compelling nonparty to produce documents and submit to inspections for former text that read: "This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land."

Rule 35. Physical and mental examination of persons

Rule 35(a). Order for examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

History: **En. Sec. 35, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.**

Compiler's Comments

1993 Amendment: In first sentence substituted "physical or mental examination by a suitably licensed or certified examiner" for "physical examination by a physician, or mental examination by a physician or psychologist".

Rule 35(b). Report of examiner. (1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at the trial.

(2) Waiver of privilege. Either by (1) requesting and obtaining a report of the examination ordered as provided herein, or by taking the deposition of the examiner, or by (2) commencing an action or asserting a defense which places in issue the mental or physical condition of a party to the action, the party examined or a party to the action waives any privilege the party may have in that action or any other action involving the same controversy, regarding the testimony of every person who has treated, prescribed, consulted, or examined or may thereafter treat, consult, prescribe or examine, such party in respect to the same mental or physical condition; but such waiver shall not apply to any treatment, consultation, prescription or examination for any mental or physical condition not related to the pending action. Upon motion seasonably made, and upon notice and for good cause shown, the court in which the action is pending, may make an order prohibiting the introduction in evidence of any such portion of the medical record of any person as may not be relevant to the issues in the pending action.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

History: En. Sec. 35, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-6, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In (1), in three places, and in (3), in two places, substituted references to examiner for references to examining physician or psychologist; at end of (1), after "trial", deleted "or may hold the physician or psychologist in contempt of court, or both"; and made minor changes in style.

Cross-References

Doctor-patient privilege, 26-1-805.

Speech-language pathologist, audiologist-client privilege, 26-1-806.

Psychologist-client privilege, 26-1-807.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Rule 35(c). Repealed. Sup. Ct. Ord. May 27, 1993.

History: En. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 36. Requests for admissions

Rule 36(a). Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action, only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant. If objection is made, the reasons therefor shall be stated. The answers shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

History: En. Sec. 36, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 36(b). Effect of admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

History: En. Sec. 36, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Procedure when answer admits part of plaintiff's claim, 25-4-601.

Effect of failure to deny averments in pleadings, Rule 8(d), M.R.Civ.P.

Rule 37. Failure to make discovery: sanctions

Rule 37(a). Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or incomplete answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of expenses of motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

History: En. Sec. 37, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Attorney's fees as costs, Title 25, ch. 10, part 3.

Rule 37(b). Failure to comply with order. (1) Sanctions by court in district where deposition is taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by court in which action is pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

History: En. Sec. 37, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Motion to strike, Rule 12(f), M.R.Civ.P.

Rule 37(c). Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

History: En. Sec. 37, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Attorney's fees as costs, Title 25, ch. 10, part 3.

Rule 37(d). Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

History: En. Sec. 37, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Attorney's fees as costs, Title 25, ch. 10, part 3.

Rule 37(g). Failure to participate in the framing of a discovery plan. If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

History: En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Costs, Title 25, ch. 10.

VI. Trials

Rule 38. Jury trial of right

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Trials, Title 25, ch. 7.

Rule 38(a). Right reserved. The right of trial by jury as declared by The Constitution of the State of Montana or as given by a statute of the state of Montana shall be preserved to the parties inviolate.

History: En. Sec. 38, Ch. 13, L. 1961.

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Trials, Title 25, ch. 7.

Right to jury trial in Municipal Courts, 25-30-105.

Right to jury trial in Justice's Court, 25-31-803.

Right to jury trial in criminal proceedings in District Court, 46-16-110.

Rule 38(b). Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

History: En. Sec. 38, Ch. 13, L. 1961.

Rule 38(c). [Demand] — specification of issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

History: En. Sec. 38, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Issues defined — types, 25-7-101.

Rule 38(d). Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by the party of trial by jury. A waiver of trial by jury is not revoked by an amendment of a pleading asserting only a claim or defense arising out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

History: En. Sec. 38, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 39. Trial by jury or by the court

Cross-References

Province of court and jury, Title 26, ch. 1, part 2.

Rule 39(a). By jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the register of actions as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist.

History: En. Sec. 39, Ch. 13, L. 1961.

Cross-References

When issues of fact to be decided by jury, 25-7-103.

Rule 39(b). By the court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court upon motion or of its own initiative may on 10 days' notice to the parties order a trial by a jury of any or all issues.

History: En. Sec. 39, Ch. 13, L. 1961.

Cross-References

Issues defined — types, 25-7-101.

Rule 39(c). Advisory jury and trial by consent. In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

History: En. Sec. 39, Ch. 13, L. 1961.

Rule 40. Assignment of cases for trial. The district courts shall provide by rule for the placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the court deem expedient. Precedence shall be given to actions entitled thereto by any statute of the state of Montana.

History: En. Sec. 40, Ch. 13, L. 1961.

Cross-References

Rules for courts of record, 3-1-112.

Rule 41. Dismissal of actions

Cross-References

Judgment to be on merits, 25-9-101.

Rule 41(a). Voluntary dismissal — effect thereof. (1) By plaintiff — by stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the state of Montana, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, which ever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice.

(2) By order of court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

History: En. Sec. 41, Ch. 13, L. 1961; amd. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 41(b). Involuntary dismissal — effect thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or failure to join a party under Rule 19, operates as an adjudication upon the merits.

History: En. Sec. 41, Ch. 13, L. 1961; amd. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: Deleted former second through fourth sentences that read: "After the plaintiff, in an action tried by the court without a jury, has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a)."

Rule 41(c). Dismissal of counterclaim, cross-claim, or third-party claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served, or, if there is none, before the introduction of evidence at the trial or hearing.

History: En. Sec. 41, Ch. 13, L. 1961; amd. Sec. 1, Ch. 111, L. 1963.

Cross-References

Counterclaim and cross-claim, Title 25, ch. 4, part 4.

Mode of trial of counterclaim, 25-7-104.

Rule 41(d). Costs of previously-dismissed action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

History: En. Sec. 41, Ch. 13, L. 1961; amd. Sec. 1, Ch. 111, L. 1963.

Cross-References

Costs, Title 25, ch. 10.

Rule 41(e). Failure to serve summons. No action heretofore or hereafter commenced shall be further prosecuted as to any defendant who has not appeared in the action or been served in the action as herein provided within 3 years after the action has been commenced, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced, on its own motion, or on the motion of any party interested therein, whether named in the complaint as a party or not, unless summons shall have been issued within 1 year, or unless summons issued within one year shall have been served and filed with the clerk of the court within 3 years after the commencement of said action, or unless appearance has been made by the defendant or defendants therein within said 3 years. When more than one defendant has been named in an action, the action may within the discretion of the trial court be further prosecuted against any defendant who has appeared within 3 years, or upon whom summons which has been issued within 1 year has been served and filed with the clerk within 3 years as herein required.

History: **En. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. Mar. 26, 1993.**

Compiler's Comments

1993 Amendment: In two places, after "served", deleted "and return made".

Cross-References

Statutes of Limitations, Title 27, ch. 2.

Rule 42. Consolidation — separate trials

Rule 42(a). Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

History: **En. Sec. 42, Ch. 13, L. 1961.**

Rule 42(b). Separate trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

History: **En. Sec. 42, Ch. 13, L. 1961.**

Cross-References

Multiple claims or defendants — proper place of trial, 25-2-116, 25-2-117.

Rule 43. Evidence

Rule 43(b). Deleted. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

History: **En. Sec. 43, Ch. 13, L. 1961.**

Rule 43(c). Deleted. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

History: **En. Sec. 43, Ch. 13, L. 1961.**

Rule 43(d). Affirmation in lieu of oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

History: **En. Sec. 43, Ch. 13, L. 1961.**

Cross-References

Form of ordinary oath, 1-6-102.

Rule 43(e). Evidence on motions. Except as otherwise provided in Rule 56, when a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

History: **En. Sec. 43, Ch. 13, L. 1961.**

Rule 43(f). Interpreters. The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

History: **En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.**

Cross-References

Costs, Title 25, ch. 10.

Interpreters to be paid as witnesses, 26-2-504.

Interpreters for the deaf in official proceedings, Title 49, ch. 4, part 5.

Rule 44. Proof of official record

Rule 44(a). Authentication. (1) Domestic. An official record kept within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purposes, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice-consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

History: En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In (1) substituted "or within a territory subject to the administrative or judicial jurisdiction of the United States" for "territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands"; in (2), near middle after "consul general", deleted "consul" and inserted last sentence concerning certification as provided by treaty or convention; and made minor changes in style.

Cross-References

Effect of former judgments and orders, Title 26, ch. 3.

Public records and reports as hearsay — exception, Rule 803, M.R.Ev. (see Title 26, ch. 10).

Former testimony as hearsay — exception, Rule 804, M.R.Ev. (see Title 26, ch. 10).

Requirement of authentication or identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).

Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

Rule 44(b). Lack of record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

History: En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Absence of public record as hearsay — exception, Rule 803, M.R.Ev. (see Title 26, ch. 10).

Rule 44(c). Other proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

History: En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Effect of former judgments and orders, Title 26, ch. 3.

Public records and reports as hearsay — exception, Rule 803, M.R.Ev. (see Title 26, ch. 10).

Absence of public record as hearsay — exception, Rule 803, M.R.Ev. (see Title 26, ch. 10).

Former testimony as hearsay — exception, Rule 804, M.R.Ev. (see Title 26, ch. 10).

Requirement of authentication or identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).

Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

Rule 44.1. Determination of foreign law. A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Montana Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Books containing laws presumed correct, 26-1-603.

Judicial notice of law, Rule 202, M.R.Ev. (see Title 26, ch. 10).

Uniform Transboundary Pollution Reciprocal Access Act, Title 75, ch. 16.

Rule 45. Subpoena

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

Rule 45(a). For attendance of witnesses — form — issuance. Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

History: En. Sec. 45, Ch. 13, L. 1961.

Cross-References

Documents requiring seals, 3-1-206.

Issuance of subpoena, 26-2-102.

Rule 45(b). For production of documentary evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things.

History: En. Sec. 45, Ch. 13, L. 1961.

Rule 45(c). Service. A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service is made by exhibiting the original and delivering a true copy to the witness personally, giving or offering to the witness at the same time, if demanded by the witness, the fees to which the witness is entitled for travel to and from the place designated, and 1 day's attendance there. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

History: En. Sec. 45, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Mileage — allowance, 2-18-503.

Duties of District Court Clerk relating to jurors and witnesses, 3-5-510.

Statement to Board of County Commissioners concerning witnesses, 3-5-512.

Witness fees, Title 26, ch. 2, part 5.

Rule 45(d). Subpoena for taking depositions — place of examinations. (1) Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the clerk of court where the action is pending, or for the district in which the deposition is to be taken of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of this rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A resident of the state may be required to attend an examination only in the county wherein that person resides or is employed or transacts business in person, or at such other convenient place as is fixed by order of court. A

nonresident of the state may be required to attend in any county of the state wherein the nonresident is served with a subpoena or at any other convenient place as is fixed by order of court.

History: En. Sec. 45, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. June 26, 1990, eff. June 26, 1990.

Cross-References

Rules for determining residence, 1-1-215.

Depositions upon oral examination, Rule 30, M.R.Civ.P.

Rule 45(e). Subpoena for a hearing or trial. At the request of any party subpoenas for attendance at a hearing or trial shall be issued as provided by Rule 45(a), and such subpoenas for a hearing or trial in a district court may be served at any place within the state.

History: En. Sec. 45, Ch. 13, L. 1961.

Rule 45(f). Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

History: En. Sec. 45, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Contempts in Justices' Court, Title 3, ch. 10, part 4.

Disobedience — how punished, 26-2-104.

Criminal contempt, 45-7-309.

Rule 46. Exceptions unnecessary. Formal exceptions to rulings, orders, or findings of the court are unnecessary; but for all purposes it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take, or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

History: En. Sec. 46, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Demurrers, pleas, etc., abolished, Rule 7(c), M.R.Civ.P.

What the court may review on an appeal from a judgment, Rule 2, M.R.App.P. (see Title 25, ch. 21).

Rule 47. Jurors

Cross-References

Juries and jurors, Title 3, ch. 15.

Rule 47(a). Examination of jurors. The court shall permit the parties or their attorneys to conduct the examination of prospective jurors under its supervision. The court may supplement the examination by such further inquiry as it deems proper. Challenges for cause must be tried by the court. The juror challenged and any other person may be examined as a witness on the trial of the challenge.

History: En. Sec. 47, Ch. 13, L. 1961.

Rule 47(b). Manner of selection and order of examination of jurors. From the entire jury panel, an initial panel of 20 jurors shall be called in the first instance, and before any voir dire examination of the jury shall be had. Examination of all jurors in the initial panel shall be completed by the plaintiff before examination by the defendant. If challenges for cause are allowed, an additional juror shall be called from the entire panel immediately upon the allowance of challenge, and the juror called to replace the juror excused for cause shall take the number of the juror who has been excused, to provide a full initial panel of 20 jurors, whose examination shall be completed before any peremptory challenges are made. When the voir dire examination has been completed, each side shall have four peremptory challenges, and they shall be exercised by the plaintiff first striking one, the defendant than striking one, and so on, until each side has exhausted or waived its right. In event one or more alternate jurors are called, the next jurors remaining in the initial panel, if any, shall be called by the clerk to be the alternate jurors. In event all jurors remaining of original initial panel of 20 jurors, including those substituted for those jurors excused for cause, have been subjected to peremptory challenge, then the clerk shall call additional jurors from the remainder of the jury panel to provide alternate jurors who will be subject to challenge as provided by law. In event there is more than one party defendant, and should it appear that each defendant is entitled to peremptory challenges, then the original panel shall be increased to provide four additional jurors for each defendant who is entitled to exercise peremptory challenges. The clerk shall keep a record of the order in which jurors are called, and in event the entire initial panel has not been exhausted by challenges, the court shall excuse sufficient of the last called jurors until a jury of 12 persons and the determined number of alternates shall remain to make up the trial jury.

History: En. Sec. 47, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Cross-References

Selection of jury, Title 25, ch. 7, part 2.

Rule 47(c). Alternate jurors. The court may direct that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror shall not join the jury in its deliberation unless called upon by the court to replace a member of the jury. The alternate juror's conduct during the period in which the jury is considering its verdict shall be regulated by instructions of the trial court. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged after the jury arrives at its verdict. If one or two alternate jurors are called each party is entitled to one peremptory challenge in addition to those otherwise allowed by subdivision (b) of this rule. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternates.

History: En. Sec. 47, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Procedure when a juror becomes sick, 25-7-304.

Rule 48. Juries — verdict. At least two-thirds in number of any jury may render a verdict or finding, and such verdict or finding so rendered shall have the same force and effect as if all such jury concurred therein. The parties may stipulate that the jury shall consist of less number than 12.

History: En. Sec. 48, Ch. 13, L. 1961.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Jury defined, 3-15-101.

Number of jurors in a trial jury, 3-15-106.

Conduct of jury after case submitted to it, 25-7-403.

Jury's verdict, Title 25, ch. 7, part 5.

Rule 49. Special verdicts and interrogatories

Cross-References

Jury's verdict, Title 25, ch. 7, part 5.

Rule 49(a). Special verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

History: En. Sec. 49, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 49(b). General verdict accompanied by answer to interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.

History: En. Sec. 49, Ch. 13, L. 1961.

Rule 50. Judgment as a matter of law in actions tried by jury; alternative motion for new trial; conditional rulings

Cross-References

Pleadings, motions, and other papers, Title 25, ch. 4.

Rule 50(a). Judgment as a matter of law. (1) If during a trial by jury a party has been fully heard with respect to an issue and there is no legally sufficient evidentiary basis for a reasonable jury to have found for that party with respect to that issue, the court may grant a motion for judgment as a matter of law against that party on any claim, counterclaim, cross-claim, or third party claim that cannot under the controlling law be maintained without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

History: En. Sec. 50, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: Substituted present text concerning judgment as a matter of law for former text that read: "A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury."

Cross-References

Evidence on motions, Rule 43(e), M.R.Civ.P.

Rule 50(b). Renewal of motion for judgment after trial; alternative motion for new trial. Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than 10 days after service of notice of entry of judgment. A motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

Motions provided by this subdivision shall be heard and determined within the times provided by Rule 59 for the hearing and determination of motions for new trial.

History: En. Sec. 50, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In first sentence substituted "judgment as a matter of law" for "directed verdict"; at beginning of second sentence inserted "Such a motion may be renewed by service and filing" and at end deleted "a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with the party's motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with the party's motion for a directed verdict"; in third sentence, near beginning after "new trial", inserted "under Rule 59", after "joined with" substituted "a renewal of the motion for judgment as a matter of law" for "this motion", and near end substituted "requested" for "prayed for"; in fourth and fifth sentences, after "court may", inserted "in disposing of the renewed motion" and substituted "as a matter of law" for "as if the requested verdict had been directed"; and made minor changes in style.

Cross-References

New trial, Title 25, ch. 11.

Rule 50(c). Conditional rulings on grant of motion for judgment as a matter of law. (1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the supreme court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the respondent on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the supreme court.

(2) The party against whom judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after service of notice of entry of the judgment.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In (1), near beginning of first sentence before "motion", inserted "renewed" and after "judgment" substituted "as a matter of law" for "notwithstanding the verdict, provided for in subdivision (b) of this rule"; and in (2), after "party", substituted "against whom judgment as a matter of law has been rendered" for "whose verdict has been set aside on motion for judgment notwithstanding the verdict" and at end deleted "notwithstanding the verdict".

Cross-References

New trial, Title 25, ch. 11.

Rule 50(d). Denial of motion for judgment as a matter of law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as respondent, assert grounds entitling the party to a new trial in the event the supreme court concludes that the trial court erred in denying the motion for judgment. If the supreme court reverses the judgment, nothing in this rule precludes it from determining that the respondent is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In first sentence, after "judgment", substituted "as a matter of law" for "notwithstanding the verdict" and at end deleted "notwithstanding the verdict".

Cross-References

New trial, Title 25, ch. 11.

Rule 51. Instructions to jury — objection. The court may, during the trial or at the close of the evidence, request each of the parties to submit proposed written instructions on the law of the case. No party may assign as error the failure to instruct on any point of law unless that party offers an instruction thereon. The court shall rule upon the proposed instructions and may prepare other written instructions to be given of its own motion and shall submit to the parties the instructions that will be given and provide opportunity to make objections. Objections made shall specify and state the particular grounds on which the instruction is objected to and it shall not be sufficient in stating the ground of such objection to state generally the instruction does not state the law or is against the law, but such ground of objection shall specify particularly wherein the instruction is insufficient or does not state the law, or what particular clause therein is objected to. All objections and rulings thereon shall be made out of the presence of the jury. No exceptions are necessary to the rulings of the court on the giving or the refusal of instructions. The court shall read to the jury the instructions given before the arguments of counsel are commenced.

History: **En. Sec. 51, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.**

Cross-References

Admonition when jury permitted to separate, 25-7-402.

Conduct of jury after case submitted to it, 25-7-403.

Papers which may be taken into jury room, 25-7-404.

Jury's request for further information, 25-7-405.

Rule 52. Findings by the court; judgment on partial findings

Rule 52(a). Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule. However, any order of the court granting a motion under Rules 12 or 56 which is appealable to an appellate court shall specify the grounds therefor with sufficient particularity as to apprise the parties and the appellate court of the rationale underlying the ruling and this may be done in the body of the order or in an attached opinion. The court may require any party to submit proposed findings of fact and conclusions of law for the court's consideration and the court may adopt any such proposed findings or conclusions so long as they are supported by the evidence and law of the case.

History: En. Sec. 52, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In third sentence, near beginning after "fact", inserted "whether based on oral or documentary evidence"; at end of sixth sentence substituted "subdivision (c) of this rule" for "Rule 41(b)"; and made minor changes in style.

Cross-References

Trial by the court, Title 25, ch. 7, part 6.

Questions of fact, 26-1-202.

Contents and filing of restraining order granted without notice, 27-19-316.

Rule 52(b). Amendment. Upon motion of a party made not later than 10 days after notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

History: En. Sec. 52, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Aug. 1, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Cross-References

Effect in time for appeal, Rule 5, M.R.App.P. (see Title 25, ch. 21).

Rule 52(c). Judgment on partial findings. If during a trial without a jury a party has been fully heard with respect to an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party on any claim, counterclaim, cross-claim or third-party claim that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

History: En. Sup. Ct. Ord. Mar. 26, 1993.

Rule 52(d). Time for determining motions. Motions provided under subdivision (b) of this rule shall be determined within the time provided by Rule 59 in the cases of motions for new trial and amendment of judgment and if the court shall fail to rule on the motion within the 45 day period, the motion shall be deemed denied.

History: En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; Rule 52(c) redes. Rule 52(d) Sup. Ct. Ord. Mar. 26, 1993.

Rule 53. Masters

Cross-References

Referees, Title 25, ch. 7, part 7.

Water Masters, Title 3, ch. 7, part 3.

Rule 53(a). Appointment and compensation. Each district court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district, and the court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, an examiner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain the master's report as security for the master's compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

History: En. Sec. 53, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Execution of judgment, Title 25, ch. 13.

Rule 53(b). Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

History: En. Sec. 53, Ch. 13, L. 1961.

Cross-References

Pleading an account, 25-4-302.

Rule 53(c). Powers. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Montana Rules of Evidence for a court sitting without a jury.

History: En. Sec. 53, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Form of ordinary oath, 1-6-102.

Rule 53(d). Proceedings. (1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the master may proceed ex parte, or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) Statement of accounts. When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

History: **En. Sec. 53, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

Pleading an account, 25-4-302.

Subpoenas and witnesses, Title 26, ch. 2.

Rule 53(e). Report. (1) Contents and filing. The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and serve on all parties notice of the filing. In an action to be tried without a jury, unless otherwise directed by the order of reference, the master shall file with the report a transcript of the proceedings and of the evidence and the original exhibits. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party.

(2) In nonjury actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In jury actions. In an action to be tried by a jury the master shall not be directed to report the evidence. The master's findings upon the issues submitted to the master are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) Stipulations as to findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft report. Before filing the master's report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

History: En. Sec. 53, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In (1), at end of second sentence, inserted "serve on all parties notice of the filing", in third sentence, after "reference,", inserted "the master" and substituted "the report" for "it", and substituted last sentence concerning service of report on parties for former sentence that read: "The clerk shall forthwith mail to all parties notice of the filing"; and made minor changes in style.

VII. Judgment

Part Cross-References

Power of court to compel obedience, 3-1-111.

Disobedience of judgment as contempt, 3-1-501, 3-10-401, 3-11-303.

Judgment in contempt cases final, 3-1-523.

Territorial extent, 3-5-312.

Judgment book, 3-5-507.

Illegality of confession of judgment in contract, 28-2-709.

Rule 54. Judgments — costs

Cross-References

Judgments, Title 25, ch. 9.

Costs, Title 25, ch. 10.

Effect of former judgments and orders, Title 26, ch. 3.

Rule 54(a). Definition — form. A judgment is the final determination of the rights of the parties in an action or proceeding and as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

History: En. Sec. 54, Ch. 13, L. 1961.

Cross-References

From what judgment or order an appeal may be taken, Rule 1, M.R.App.P. (see Title 25, ch. 21).

What the court may review on an appeal from a judgment, Rule 2, M.R.App.P. (see Title 25, ch. 21).

Rule 54(b). Judgment upon multiple claims or involving multiple parties. When multiple claims for relief or multiple parties are involved in an action, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

History: En. Sec. 54, Ch. 13, L. 1961.

Cross-References

Whose rights determined by judgment, 25-9-201.

Rule 54(c). Demand for judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

History: En. Sec. 54, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 54(d). Costs. Except when express provision therefor is made either in a statute of the state of Montana or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the state of Montana, its officers, agencies, and political subdivisions shall be imposed only to the extent permitted by law.

History: En. Sec. 54, Ch. 13, L. 1961.

Cross-References

Governmental entities not required to give security, 25-1-402.

Allowable costs, Title 25, ch. 10, part 2.

Payment of costs by governmental entities, Title 25, ch. 10, part 7.

Costs on appeal, Rule 33, M.R.App.P. (see Title 25, ch. 21).

Costs in quo warranto proceedings, 27-28-205.

Forcible entry and unlawful detainer, Title 70, ch. 27.

Quieting title to real property, Title 70, ch. 28.

Costs on foreclosure of lien, 71-3-124.

Rule 55. Default

Cross-References

Judgment to be on the merits, 25-9-101.

Rule 55(a). Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

History: En. Sec. 55, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Collection of Clerk's and Sheriff's costs after judgment, 25-10-406.

Clerk to include costs in judgment, 25-10-504.

Affidavits, Title 26, ch. 1, part 10.

Rule 55(b). Judgment. Judgment by default may be entered as follows:

(1) By the clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person, and has been personally served. No judgment by default shall be entered by the clerk when service has been by publication.

(2) By the court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative, or guardian ad litem, who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or,

if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the state of Montana.

History: En. Sec. 55, Ch. 13, L. 1961; amd. Sup. Ct. Ord. June 1, 1964, eff. July 1, 1964; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Powers of judges at chambers, 3-5-311.

Rule 55(c). Default — setting aside — extension of time by court or stipulation of parties. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b). No default of any party shall be entered, and no default judgment shall be entered against any party, except upon application of the opposing party. Any stipulation for extension of time between the parties or their counsel, whether in writing or made verbally before the court, shall be effective to extend the time for serving and/or filing any appearance, motion, pleading or proceeding, according to the terms of such stipulation. In any case if a party in default shall serve and file an appearance, motion, pleading or proceeding prior to application to the clerk for default, then such defaulting party shall not thereafter be considered in default as to that particular appearance, motion, pleading, or proceeding.

History: En. Sec. 55, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Extension of time, 25-1-301.

Notice requirements after appearance of defendant, 25-3-401.

Rule 55(d). Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

History: En. Sec. 55, Ch. 13, L. 1961.

Rule 56. Summary judgment

Rule 56(a). For claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

History: En. Sec. 56, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Uniform Declaratory Judgments Act, Title 27, ch. 8.

Rule 56(b). For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

History: En. Sec. 56, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Uniform Declaratory Judgments Act, Title 27, ch. 8.

Rule 56(c). Motion and proceedings thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

History: En. Sec. 56, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Rule 56(d). Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

History: En. Sec. 56, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 56(e). Form of affidavits — further testimony — defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

History: En. Sec. 56, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Evidence on motions, Rule 43(e), M.R.Civ.P.

Affidavits, Title 26, ch. 1, part 10.

Competency in general; disqualification, Rule 601, M.R.Ev. (see Title 26, ch. 10).

Rule 56(f). When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

History: En. Sec. 56, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Motion to postpone trial for absence of testimony, 25-4-501.

Evidence on motions, Rule 43(e), M.R.Civ.P.

Affidavits, Title 26, ch. 1, part 10.

Rule 56(g). Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

History: En. Sec. 56, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Costs, Title 25, ch. 10.

Rule 57. Declaratory judgments. The procedure for obtaining a declaratory judgment pursuant to Title 27, chapter 8, Montana Code Annotated, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39, subject to the provisions of section 27-8-302, Montana Code Annotated. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

History: En. Sec. 57, Ch. 13, L. 1961.

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Rule 58. Entry of judgment. Unless the court otherwise directs and subject to the provisions of Rule 54(b), judgment upon the verdict of a jury shall be entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49. When the court directs that a party recover only money or costs or that all relief be denied, the clerk shall enter judgment forthwith upon receipt by the clerk of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. The entry of the judgment shall not be delayed for the taxing of costs.

History: En. Sec. 58, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

General duties of clerk, 3-5-501.

Judgment book, 3-5-507.

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Imposition of costs, Title 25, ch. 10, part 1.

Rule 59. New trials — amendment of judgment

Rule 59(a). Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for any of the reasons provided by the statutes of the state of Montana.

A motion for new trial shall state with particularity the grounds therefor, it not being sufficient merely to set forth the statutory grounds, but the motion may be amended, upon reasonable notice, up to and including the time of hearing the motion.

On motion for a new trial in an action tried without a jury, the court may take additional testimony, amend the findings of fact and conclusions of law or make new findings and conclusions, set aside, vacate, modify or confirm any judgment that may have been entered or direct the entry of a new judgment.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Grounds for new trial, 25-11-102.

Grounds after trial by the court, 25-11-103.

Rule 59(b). Time for motion. A motion for a new trial shall be served not later than 10 days after service of notice of the entry of the judgment.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Cross-References

How motion for new trial made, 25-11-104.

Rule 59(c). Time for serving affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which periods may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Cross-References

How motion for new trial made, 25-11-104.

Evidence on motions, Rule 43(e), M.R.Civ.P.

Affidavits, Title 26, ch. 1, part 10.

Rule 59(d). Time for ruling on motion. If the court shall fail to rule on a motion for new trial within 45 days from the time the motion is filed, the motion shall, at the expiration of said period, be deemed denied.

The decision on the motion may be entered in the minutes of the court, or may be made in writing in chambers or in any county in the state where the judge may be, and be filed with the clerk of court in the county where the action is pending. Upon the hearing, reference may be had in all cases to the pleadings and the orders of the court on file, and reference may also be had to any depositions and documentary evidence offered on the trial, and to the proceedings on the trial and, when necessary, reference may be had to the notes of the court reporter.

History: En. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

How motion for new trial made, 25-11-104.

Rule 59(e). On initiative of court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Grounds for new trial, 25-11-102.

Rule 59(f). Order granting new trial. Any order of the court granting a new trial, shall specify the grounds therefor with sufficient particularity as to apprise the parties and the appellate court of the rationale underlying the ruling, and this may be done in the body of the order, or in an attached opinion.

History: En. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Costs of appeal from order of new trial discretionary with court, 25-10-104.

Grounds for new trial, 25-11-102.

Grounds for appeal, Rule 1, M.R.App.P. (see Title 25, ch. 21).

Rule 59(g). Motion to alter or amend a judgment. A motion to alter or amend the judgment shall be served not later than 10 days after the service of the notice of the entry of the judgment, and may be combined with the motion for a new trial herein provided for. This motion shall be determined within the time provided hereinabove with respect to a motion for a new trial and if the court shall fail to rule on the motion within the 45 day period, the motion shall be deemed denied.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Sept. 7 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. and redes. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 60. Relief from judgment or order

Rule 60(a). Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record, and in pleadings, and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

History: **En. Sec. 60, Ch. 13, L. 1961.**

Cross-References

Papers with technical defects, 25-4-112.

Effect of errors and irregularities in depositions, Rule 32(d), M.R.Civ.P.

Rule 60(b). Mistakes — inadvertence — excusable neglect — newly discovered evidence — fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) when a defendant has been personally served, whether in lieu of publication or not, not more than 60 days after the judgment, order or proceeding was entered or taken, or, in a case where notice of entry of judgment is required by Rule 77(d), not more than 60 days after service of notice of entry of judgment. When from any cause the summons in an action has not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or a legal representative, at any time within 180 days after the rendition of any judgment in such action, to answer to the merits of the original action. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as may be required by law, or to set aside a judgment for fraud upon the court.

History: **En. Sec. 60, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Aug. 1, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.**

Cross-References

Fraud and mistake, Title 28, ch. 2, part 4.

Rule 60(c). Time for determining motions. Motions provided by subdivision (b) of this rule shall be determined within the times provided by Rule 59 in the case of motions for new trials and amendment of judgment and if the court shall fail to rule on the motion within the 45 day period, the motion shall be deemed denied.

History: **En. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Rule 61. Harmless error. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

History: En. Sec. 61, Ch. 13, L. 1961.

Cross-References

Papers with technical defects, 25-4-112.

Rulings on evidence, Rule 103, M.R.Ev. (see Title 26, ch. 10).

Rule 62. Stay of proceedings to enforce a judgment

Cross-References

Execution of judgment, Title 25, ch. 13.

Stay of judgment or order pending appeal, Rule 7, M.R.App.P. (see Title 25, ch. 21).

Rule 62(a). Superseded. M.R.App.P., Rule 7.

History: En. Sec. 62, Ch. 13, L. 1961.

Rule 62(b). Stay on motion for new trial or for judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the district court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

History: En. Sec. 62, Ch. 13, L. 1961.

Cross-References

Security for damages, 27-19-306.

Rule 62(c). Injunction pending appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the district court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

History: En. Sec. 62, Ch. 13, L. 1961.

Cross-References

Appeals from injunction orders, Rule 40, M.R.App.P. (see Title 25, ch. 21).

Injunctions, Title 27, ch. 19.

Rule 62(d). Superseded. M.R.App.P., Rule 7.

History: En. Sec. 62, Ch. 13, L. 1961.

Rule 62(e). Stay in favor of the state of Montana or agency thereof. When an appeal is taken by the state of Montana or an officer or agency or governmental subdivision thereof, and the operation or enforcement of the judgment is stayed, no security shall be required from the appellant. In all cases, the parties may by written stipulation waive the filing of security.

History: En. Sec. 62, Ch. 13, L. 1961.

Cross-References

Governmental entities not required to give security, 25-1-402.

Security for damages, 27-19-306.

Rule 62(g). Power of appellate court not limited. The provisions in this rule do not limit any power of the supreme court of the state of Montana or of a justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

History: En. Sec. 62, Ch. 13, L. 1961.

Cross-References

Injunctions by Supreme Court, 3-2-205.

Rule 62(h). Stay of judgment upon multiple claims. When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

History: En. Sec. 62, Ch. 13, L. 1961.

VIII. Provisional and Final Remedies and Special Proceedings

Rule 64. Seizure of person or property. At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by law.

History: En. Sec. 63, Ch. 13, L. 1961.

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

Arrest and bail in civil actions, Title 27, ch. 16.

Prejudgment attachment, Title 27, ch. 18.

Injunctions, Title 27, ch. 19.

Rule 65. Injunctions. The procedure for granting restraining orders and temporary and permanent injunctions shall be as provided by statute.

History: En. Sec. 64, Ch. 13, L. 1961.

Cross-References

Calendar, Rule 39, M.R.App.P. (see Title 25, ch. 21).

Appeals from injunction orders, Rule 40, M.R.App.P. (see Title 25, ch. 21).

Injunctions, Title 27, ch. 19.

Rule 66. Receivers. An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the appointment of and administration of estates by receivers or other similar officers shall be in accordance with the Montana statutes and with the practice heretofore followed in the courts of this state. In all other respects, the action in which the appointment of the receiver is sought or which is brought by or against a receiver is governed by these rules.

History: En. Sec. 65, Ch. 13, L. 1961.

Cross-References

Appointing a receiver, Title 25, ch. 14, part 2.

Receivers, Title 27, ch. 20.

Rule 67. Deposit in court. In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of chapter 8, Title 25, Montana Code Annotated.

History: En. Sec. 66, Ch. 13, L. 1961.

Rule 68. Offer of judgment. At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

History: En. Sec. 67, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Costs, Title 25, ch. 10.

Summary judgment on liability, Rule 56(c), M.R.Civ.P.

Compromise and offers to compromise, Rule 408, M.R.Ev. (see Title 26, ch. 10).

Rule 69. Execution. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of and supplementary to execution shall be in accordance with the statutes of the state of Montana. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions.

History: En. Sec. 68, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

Depositions upon oral examination, Rule 30, M.R.Civ.P.

Depositions upon written questions, Rule 31, M.R.Civ.P.

Rule 70. Judgment for specific acts — vesting title. If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the court may order the clerk to issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

History: En. Sec. 69, Ch. 13, L. 1961.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Enforcement of court's order, 25-8-102.

Method of enforcement, Title 25, ch. 13, part 2.

Contents of Writ of Execution, Title 25, ch. 13, part 3.

Rule 71. Process in behalf of and against persons not parties. When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

History: En. Sec. 70, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Parties plaintiff and defendant, Rule 17, M.R.Civ.P.

IX. Appeals

Rule 72. Appeal from a district court to the supreme court. When an appeal is permitted by law from a district court to the supreme court of Montana, or in any case where original proceedings are commenced in the supreme court, such appeal or original proceeding shall be taken, perfected, and prosecuted pursuant to the provisions of the Montana Rules of Appellate Procedure and controlling statutes to the extent that they are not superseded by the Montana Rules of Appellate Procedure.

History: En. Sec. 71, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Original jurisdiction of Supreme Court, 3-2-202.

Appeal to Supreme Court, Title 25, ch. 12.

Scope of rules — from what judgment or order an appeal may be taken, Rule 1, M.R.App.P. (see Title 25, ch. 21).

Statutes superseded, Rule 53, M.R.App.P. (see Title 25, ch. 21).

X. District Courts and Clerks

Rule 77. District courts and clerk

Rule 77(a). District courts always open. The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

History: En. Sec. 72, Ch. 13, L. 1961.

Cross-References

Days on which courts may be held, 3-1-301.

Nonjudicial day, 3-1-302.

Rule 77(b). Trials and hearings — orders in chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

History: En. Sec. 72, Ch. 13, L. 1961.

Cross-References

Sittings of court to be public, 3-1-312.

Powers of judge out of court, 3-1-401.

Powers of judge at chambers, 3-5-311.

Terms and location of District Courts, Title 3, ch. 5, part 4.

Venue, Title 25, ch. 2.

Change of venue upon agreement of parties, 25-2-202.

Rule 77(c). Clerk's office and orders by clerk. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

History: En. Sec. 72, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Method of enforcement of judgment, Title 25, ch. 13, part 2.

Rule 77(d). Notice of entry of judgment or order served. Within 10 days after entry of judgment or an order in an action in which an appearance has been made, notice of such entry, together with a copy of such judgment or order or general description of the nature and amount of relief and damages thereby granted, shall be served by the prevailing party upon all parties who have made an appearance, but any other party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers.

History: En. Sec. 72, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: Near beginning, after "judgment", inserted "or an order" and near middle, after "judgment", inserted "or order".

Cross-References

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Rule 77(e). Transmittal of file on removal. Upon the filing of a copy of the petition for removal of any state district court action to the district court of the United States, district of Montana, and a request in writing therefor, the clerk of such state district court shall promptly deliver to the clerk of court of the district court of the United States, district of Montana, all papers then in the original state court file, or theretofore issued and subsequently filed and shall keep in the state court file only the copy of the petition for removal and such papers as were filed with the request for removal.

History: En. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Cross-References

Filing of transcript of docket of federal court, 25-9-303.

Rule 80. Stenographer — stenographic report or transcript as evidence. Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

History: En. Sec. 73, Ch. 13, L. 1961.

Cross-References

Copies of proceedings to be furnished by court reporter, 3-5-604.

Reporter's report prima facie evidence, 3-5-612.

Justice's Court records prima facie evidence, 3-10-502.

Proof of official record, Rule 44, M.R.Civ.P.

Impeachment of judicial record, 26-3-105.

XI. General Provisions

Rule 81. Applicability in general

Rule 81(a). Special statutory proceedings. The statutory proceedings listed in Table A and any other special statutory proceeding, whether or not listed in Table A, are excepted from these rules insofar as they are inconsistent or in conflict with the procedure and practice provided by these rules.

History: En. Sec. 74, Ch. 13, L. 1961.

Compiler's Comments

Table A. The Code Commissioner has not reprinted Table A in the MCA because it was never intended to be a complete listing, has not been updated since 1963, contains a high percentage of repealed sections, and is generally obsolete and not very useful. Interested persons may find it in the 1964 main volume of R.C.M. 1947, Vol. 7.

Cross-References

Applicability of M.R.App.P. to special statutory proceedings, Rule 52, M.R.App.P. (see Title 25, ch. 21).

Rule 81(b). Appeals to district courts. These rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, but shall govern procedure and practice relating thereto insofar as these rules are not inconsistent with such statutes.

History: En. Sec. 74, Ch. 13, L. 1961.

Cross-References

Initiating judicial review of contested administrative cases, 2-4-702.

Kinds of District Court jurisdiction, 3-5-301.

Appellate jurisdiction of District Courts, 3-5-303.

M.R.App.P. not to affect appeals to District Court, Rule 52, M.R.App.P. (see Title 25, ch. 21).

Appeals to District Court from Justices' and City Courts, Title 25, ch. 33.

Appeals to District Court from small claims function of Justices' Courts, 25-35-803.

Appeal of criminal cases from Justices' and City Courts, 46-17-311.

Rule 81(c). Rules incorporated into statutes. Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding or listed in any table appended hereto, provides that any act in a civil proceeding in a district court shall be done in the manner provided by law or as in a civil action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, insofar as practicable.

History: En. Sec. 74, Ch. 13, L. 1961.

Rule 82. Jurisdiction and venue unaffected. Except as provided in Rule 4 these rules shall not be construed to extend or limit the jurisdiction of the district courts of Montana or the venue of actions therein.

History: En. Sec. 75, Ch. 13, L. 1961.

Cross-References

Jurisdiction of District Courts, Title 3, ch. 5, part 3.

Venue in District Court actions, Title 25, ch. 2.

Rule 83. Rules by district courts. Each district court, upon agreement of the judges or a majority thereof, may from time to time make and amend rules governing its practice not inconsistent with these rules or other rules prescribed by the supreme court. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the supreme court of this state. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

History: En. Sec. 76, Ch. 13, L. 1961.

Cross-References

Rules for courts of record, 3-1-112.

Local rules, 3-2-704.

Uniform District Court Rules, Title 25, ch. 19.

Rule 84. Forms. The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

History: En. Sec. 77, Ch. 13, L. 1961.

Rule 85. Title. These rules shall be known as the Montana Rules of Civil Procedure and may be cited as M.R.Civ.P.

History: En. Sec. 78, Ch. 13, L. 1961.

Rule 86. Effective date — statutes superseded

Rule 86(a). Effective date and application to pending proceedings. These rules became effective January 1, 1962. In accordance with Chapter 16, Laws of 1963, proposed amendments to these rules shall be first prepared by the advisory committee, which shall distribute copies thereof to the bench and resident bar of the state for their consideration and suggestions. Submission of proposed amendments to the court shall be made by the advisory committee only after the advisory committee has considered suggestions received from the bench and bar. Submissions to the court shall be noticed by the court by mailing notice, containing copies of the submitted proposals to all district judges and resident attorneys licensed to practice in the Montana courts as shown by the records of the clerk of the court, and the court will receive written suggestions and objections within the time fixed in the notice, which shall be not less than 90 days thereafter. Oral hearings on proposals will be held only on special order of the court. Amendments adopted by the court will become effective on January 1 unless a different time be fixed in the order.

The court will annually, at least 30 days prior to January 1, cause to be published all amendments to these rules which are to become effective on the succeeding January 1, and transmit the same to all judges and resident lawyers of the state. Such rules as are to become effective at times other than January 1 will be published and transmitted at least 30 days prior to their effective date. These rules and amendments govern all proceedings and actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the district court their application in a particular action pending when the rules or amendments take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the action was brought applies.

History: En. Sec. 79, Ch. 13, L. 1961; amd. Sup. Ct. Ord. June 1, 1964, eff. July 1, 1964.

Cross-References

Adoption of Rules of Civil Procedure, Title 3, ch. 2, part 7.

Rule 86(b). Statutes superseded. Upon the taking effect of these rules or amendments thereto all statutes and parts of statutes in conflict therewith and the statutes listed in Tables B and C are superseded in respect of practice and procedure in the district courts.

History: En. Sec. 79, Ch. 13, L. 1961; amd. Sup. Ct. Ord. June 1, 1964, eff. July 1, 1964.

Compiler's Comments

Tables B and C. Tables B and C can be found with the annotations for this rule.

Cross-References

Statutes superseded by M.R.App.P., Rule 53, M.R.App.P. (see Title 25, ch. 21).

Appendix of Forms

Form 1. SUMMONS—OFFICIAL FORM

IN THE DISTRICT COURT OF THE ...... JUDICIAL DISTRICT
OF THE STATE OF MONTANA,
IN AND FOR THE COUNTY OF ....

A.B., Plaintiff
vs. SUMMONS
C.D., Defendant

The State of Montana to the above-named defendant:

You are hereby summoned to answer the complaint in this action which is filed in the office of the clerk of this court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness my hand and the seal of said court, this .... day of.....

E.F.
Attorney for Plaintiff,
...........................(Address)
...........................Montana.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 2. COMPLAINT ON A PROMISSORY NOTE

1. Defendant on or about June 1, 1958, executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on June 1, 1959, the sum of .... dollars with interest thereon at the rate of .... per cent per annum].[1]

[1] The pleader may use the material in one of the three sets of brackets. This choice will depend upon whether the pleader desires to plead the document verbatim, or by exhibit, or according to its legal effect.

2. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 3. COMPLAINT ON AN ACCOUNT

Defendant owes plaintiff .... dollars according to the account hereto annexed as Exhibit A.

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 4. COMPLAINT FOR GOODS SOLD AND DELIVERED

Defendant owes plaintiff .... dollars for goods sold and delivered by plaintiff to defendant between June 1, 1959, and December 1, 1959.

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 5. COMPLAINT FOR MONEY LENT

Defendant owes plaintiff .... dollars for money lent by plaintiff to defendant on June 1, 1959, which is now due.

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 6. COMPLAINT FOR MONEY PAID BY MISTAKE

Defendant owes plaintiff .... dollars for money paid by plaintiff to defendant by mistake on June 1, 1959, under the following circumstances; (stating the circumstances with particularity. See Rule 9(b)).

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 7. COMPLAINT FOR MONEY HAD AND RECEIVED

Defendant owes plaintiff $10,000 for money had and received from one G.H. on June 1, 1959, to be paid by defendant to plaintiff.

Wherefore plaintiff demands judgment against defendant for the sum of $10,000, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 8. COMPLAINT FOR NEGLIGENCE

1. On June 1, 1959, in a public highway called State Street, in Helena, Montana, defendant negligently drove a motor vehicle against the plaintiff who was then crossing said highway.

2. As a result plaintiff's leg was broken when thrown down and was otherwise injured, was prevented from transacting business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in an amount to be determined at trial.

Wherefore plaintiff demands judgment against defendant in an amount to be determined at trial and costs.

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 9. COMPLAINT FOR NEGLIGENCE WHERE PLAINTIFF IS UNABLE TO DETERMINE DEFINITELY WHETHER THE PERSON RESPONSIBLE IS C.D. or E.F. OR WHETHER BOTH ARE RESPONSIBLE AND WHERE PLAINTIFF'S EVIDENCE MAY JUSTIFY A FINDING OF WILLFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE

1. On June 1, 1959, in a public highway called State Street in Helena, Montana, defendant C.D. or defendant E.F., or both defendants C.D. and E.F. willfully or recklessly or negligently drove or caused to be driven a motor vehicle against the plaintiff who was then crossing said highway.

2. As a result plaintiff's leg was broken when thrown down and was otherwise injured, was prevented from transacting business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in an amount to be determined at trial.

Wherefore plaintiff demands judgment against C.D. or against E.F. or against both in an amount to be determined at trial and costs.

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 10. COMPLAINT FOR CONVERSION

On or about December 1, 1959, defendant converted to defendant's own use ten bonds of the .... Company (inserting brief identification as by number and issue) of the value of .... dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of .... dollars, interest and costs.

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 11. COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO CONVEY LAND

1. On or about December 1, 1958, plaintiff and defendant entered into an agreement in writing a copy of which is hereto annexed as Exhibit A.

2. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

3. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement; (2) damages in the sum of .... dollars; (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of .... dollars; and (4) judgment for costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 12. COMPLAINT ON CLAIM FOR DEBT AND TO SET ASIDE FRAUDULENT CONVEYANCE UNDER RULE 18(b)

1. Defendant C.D. on or about June 1, 1958, executed and delivered to plaintiff a promissory note (setting forth the note verbatim, or in substance and legal effect, or by annexing a copy, as in Form 2).

2. Defendant C.D. owes to plaintiff the amount of said note and interest.

3. Defendant C.D. on or about December 1, 1958, conveyed property, real and personal (or specify and describe) to defendant E.F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands judgment (1) against defendant C.D. for .... dollars and interest; (2) that the aforesaid conveyance to defendant E.F. be declared void and the judgment herein be declared a lien on said property; (3) for plaintiff's costs.

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 13. COMPLAINT FOR NEGLIGENCE UNDER FEDERAL EMPLOYERS' LIABILITY ACT (45 U.S.C.A., 51-58)

1. During all the times herein mentioned defendant owned and operated in interstate commerce a railroad which passed through a tunnel located at .... and known as Tunnel No. .....

2. On or about June 1, 1958, defendant was repairing and enlarging the tunnel in order to protect interstate trains and passengers and freight from injury and in order to make the tunnel more conveniently usable for interstate commerce.

3. In the course of thus repairing and enlarging the tunnel on said day defendant employed plaintiff as one of its workers, and negligently put plaintiff to work in a portion of the tunnel which defendant had left unprotected and unsupported.

4. By reason of defendant's negligence in thus putting plaintiff to work in that portion of the tunnel, plaintiff was, while so working pursuant to defendant's orders, struck and crushed by a rock, which fell from the unsupported portion of the tunnel, and was (describing plaintiff's injuries).

5. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning .... dollars per day. By these injuries the plaintiff has been made incapable of any gainful activity, has suffered great physical and mental pain, and has incurred expense in the amount of .... dollars for medicine, medical attendance and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of .... dollars and costs.

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 14. COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

1. On or about June 1, 1956, plaintiff issued to G.H. a policy of life insurance whereby plaintiff promised to pay to K.L. as beneficiary the sum of ten thousand dollars upon the death of G.H. The policy required the payment by G.H. of a stipulated premium on June 1, 1956, and annually thereafter as a condition precedent to its continuance in force.

2. No part of the premium due June 1, 1956, was ever paid and the policy ceased to have any force or effect on July 1, 1956.

3. Thereafter, on September 1, 1956, G.H. and K.L. died as the result of a collision between a locomotive and the automobile in which G.H. and K.L. were riding.

4. Defendant C.D. is the duly appointed and acting executor of the will of G.H.; defendant E.F. is the duly appointed and acting executor of the will of K.L.; defendant X.Y. claims to have been duly designated as beneficiary of said policy in place of K.L.

5. Each of defendants C.D., E.F., and X.Y. is claiming that the above-mentioned policy was in full force and effect at the time of the death of G.H.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

6. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G.H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G.H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 15. MOTION TO DISMISS

The defendant moves the court as follows:

(1) To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

(2) To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds: (Here state reasons, such as (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the State of Montana; (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M.N. and X.Y. hereto annexed as Exhibit A and Exhibit B, respectively; (c) (etc.).)

. . . .
Attorney for Defendant
. . . .
Address

Notice of Motion

To: ...., Attorney for Plaintiff:

Please take notice, that the undersigned will bring the above motion for hearing before this court at the courtroom thereof in the Courthouse at ...., Montana, on the .... day of ...., 19.., at .... o'clock ....M. or as soon thereafter as counsel can be heard.

. . . .
Attorney for Defendant
. . . .
Address

History: En. Sec. 80, Ch. 13, L. 1961.

Form 16. ANSWER PRESENTING DEFENSES UNDER RULE 12(b)

FIRST DEFENSE

The complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, the defendant is indebted to them jointly with G.H. G.H. is alive; is a citizen and resident of the State of Montana; is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party, but has not been made one.

THIRD DEFENSE

Defendant admits the allegation(s) contained in paragraph(s) .... of the complaint; alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) .... of the complaint; and denies each and every other allegation contained in the complaint.

FOURTH DEFENSE

The right of action set forth in the complaint did not accrue within .... years next before the commencement of this action, and is therefore barred by the provisions of section (setting forth the particular section or subsection applicable thereto).

COUNTERCLAIM

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint.)

CROSS-CLAIM AGAINST DEFENDANT M.N.

(Here set forth the claim constituting a cross-claim against defendant M.N. in the manner in which a claim is pleaded in a complaint.)

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 17. ANSWER TO COMPLAINT SET FORTH IN FORM 7, WITH COUNTERCLAIM FOR INTERPLEADER DEFENSE

Defendant denies the allegations of the complaint to the extent set forth in the counterclaim herein.

COUNTERCLAIM FOR INTERPLEADER

1. Defendant received the sum of ten thousand dollars as a deposit from E.F.
2. Plaintiff has demanded the payment of such deposit by virtue of an assignment of it which plaintiff claims to have received from E.F.
3. E.F. has notified the defendant that E.F. claims such deposit, that the purported assignment is not valid, and asserts that the defendant should be held responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E.F. to be made a party defendant to respond to the complaint and to this counterclaim.

(2) That the court order the plaintiff and E.F. to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or E.F. is entitled to the sum of money.

(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 18. SUMMONS AND THIRD-PARTY COMPLAINT—INTERPLEADER

A.B., Plaintiff, vs. C.D., Defendant, and Third-Party Plaintiff, vs. E.F., Third-Party Defendant.	THIRD-PARTY SUMMONS Civil No....

The State of Montana to the Above-Named Third-Party Defendant:

You are hereby summoned to answer the third-party complaint in this action which is filed in the office of the clerk of this court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the plaintiff's attorney and upon the attorney for defendant and third-party plaintiff within 20 days after the service of this third-party summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the third-party complaint.

Witness my hand and the seal of said court, this .... day of .....

. . . .
Clerk of the District Court

(COURT SEAL)
G.H.
Attorney for Defendant
and Third-Party Plaintiff

. . . .
(Address)
. . . . , Montana
The name and address of the
attorney for Plaintiff is:
J.K.

. . . .
(Address)
. . . . , Montana

A.B., Plaintiff,
vs.
C.D., Defendant, and
Third-Party Plaintiff,
vs.
E.F., Third-Party Defendant.

THIRD-PARTY
COMPLAINT
Civil No....

1. Plaintiff A.B. has filed against defendant C.D., a complaint, a copy of which is hereto attached as Exhibit C.

2. (Here state the grounds upon which C.D. is entitled to recover from E.F., all or part of what A.B. may recover from C.D. The statement should be framed as in an original complaint.)

Wherefore C.D. demands judgment against third-party defendant E.F. for .... dollars and for costs.

. . . .
Attorney for Third-Party Plaintiff
. . . .
(Address)

History: En. Sec. 80, Ch. 13, L. 1961.

Form 18-A. NOTICE AND ACKNOWLEDGMENT FOR SERVICE BY MAIL

A.B., Plaintiff,
vs.
C.D., Defendant.

Civil No......
NOTICE AND ACKNOWLEDGMENT OF
RECEIPT OF SUMMONS AND
COMPLAINT

NOTICE

To: (insert the name and address of the person to be served.)

The enclosed summons and complaint are served pursuant to Rule 4D(1)(b) of the Montana Rules of Civil Procedure.

You may complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days after the date it was mailed to you as shown below.

If you decide to complete and return this form, you must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return this form to the sender within 20 days after the date it was mailed to you as shown below, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days after the date of signature which you place on the acknowledgment below. If you fail to answer the complaint within the foregoing 20 day period, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint will have been mailed on (insert date).

. . . .
Signature

. . . .
Date of Signature

ACKNOWLEDGMENT OF RECEIPT
OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above captioned matter at (insert address).

. . . .
Signature

. . . .
Relationship to Entity/Authority to
Receive Service of Process

. . . .
Date of Signature

History: En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Form 19. MOTION TO INTERVENE AS A DEFENDANT UNDER RULE 24

A.B., Plaintiff, vs. C.D., Defendant, E.F., Applicant for Intervention	MOTION TO INTERVENE AS A DEFENDANT Civil No...

E.F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in the attached proposed answer on the grounds (here set forth generally the grounds upon which intervention is sought, in accordance with the right of intervention contained in Rule 24) and as such as a defense to plaintiff's claim presenting (setting forth whether the same relates to questions of law or fact, or both) which are common to the main action.

. . . .
Attorney for E.F.,
Applicant for Intervention

. . . .
(Address)

NOTICE OF MOTION

(Contents the same as those in Form 15, or notice and motion may be combined in a notice of motion as provided in Rule 7(b).)

INTERVENER'S ANSWER

(Set forth defenses in accordance with the outline contained in Form 16)

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 20. MOTION FOR PRODUCTION, ETC., UNDER RULE 34

Plaintiff A.B. moves the court for an order requiring defendant C.D.:

(1) To produce and to permit plaintiff to inspect and to copy each of the following documents:

[Here list the documents and describe each of them.]

(2) To produce and permit plaintiff to inspect and to photograph each of the following objects:

[Here list the objects and describe each of them.]

(3) To permit plaintiff to enter [here describe property to be entered] and to inspect and to photograph [here describe the portion of the real property and the objects to be inspected and photographed].

Defendant C.D. has the possession, custody, or control of each of the foregoing documents and objects and of the above-mentioned real estate. Each of them constitutes or contains evidence relevant and material to a matter involved in this action, as is more fully shown in Exhibit A hereto attached.

. . . .
Attorney for Plaintiff

. . . .
Address

EXHIBIT A

STATE OF MONTANA
County of Lewis and Clark

A.B., being first duly sworn says:

(1) (Here set forth all that plaintiff knows which shows that defendant has the papers or objects in the defendant's possession or control.)

(2) (Here set forth all that plaintiff knows which shows that each of the above-mentioned items is relevant to some issue in the action.)

A.B. (Signed)

(Jurat)

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 21. REQUEST FOR ADMISSION UNDER RULE 36

Plaintiff A.B. requests defendant C.D. within .... days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine.

[Here list the documents and describe each document.]

2. That each of the following statements is true. [Here list the statements.]

. . . .
Attorney for Plaintiff
. . . .
Address

History: En. Sec. 80, Ch. 13, L. 1961.

Form 22. ALLEGATION OF REASON FOR OMITTING NECESSARY PARTY

John Doe named in this complaint is not made a party to this action [because Doe is not subject to the jurisdiction of this court]; or [for reasons stated].

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 23. SUPERSEDEAS BOND

We the undersigned jointly and severally acknowledge that we and our personal representatives are jointly bound to pay to (respondent) the sum of $.....

(Appellant) has appealed from that certain judgment (or order) (insert descriptive facts) and has obtained an order staying execution from the district court, and the condition of this bond is that if the judgment (or order) appealed from, or any part thereof, be affirmed, or the appeal dismissed, the appellant will pay the amount directed to be paid by the judgment (or order) or the part of such amount as to which the judgment (or order) is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal. If such payment be made then this bond is void, otherwise to be and remain in full force and effect. If the appellant does not make such payment within thirty days after the filing of the remittitur from the supreme court in the court from which the appeal is taken, judgment may be entered on motion of the respondent in the respondent's favor against the sureties for such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal.

. . . .
Appellant Address

. . . .
Surety Address

. . . .
Surety Address
(Justification of Sureties) . . . .
Form of bond approved. Judge

(This form with necessary alterations may be used in any situation covered by Rule 62.)

History: En. Sec. 80, Ch. 13, L. 1961 as added by Sec. 1, Ch. 3. L. 1963; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

CHAPTER 21

RULES OF APPELLATE PROCEDURE

I. Applicability of Rules

Rule

1. Scope of rules — from what judgment or order an appeal may be taken.
2. What the court may review on an appeal from a judgment.
3. Suspension of the rules.

II. Appeals From Judgments and Orders of District Courts

4. How taken.
5. Time for filing notice of appeal.
6. Undertaking for costs on appeal in civil cases.
7. Stay of judgment or order pending appeal.
8. Sureties and their justification.
9. The record on appeal.
10. Transmission of the record.
11. Docketing the appeal — filing of the record.
12. Effect of dismissal.
13. Acts of personal representatives or guardians valid when appointment vacated.
14. Ruling against respondent may be reviewed.
15. Remedial powers of the supreme court in civil cases.
16. Remittitur must be certified to the clerk of the district court.

III. Original Proceedings — Extraordinary Writs

17. Acceptance and manner of conducting.

IV. Appeals in Forma Pauperis

18. Applications and manner of proceeding.

V. General Provisions

19. Record of commissions and oaths.
20. Filing and service.
21. Computation and extension of time.
22. Motions.
23. Briefs.
24. Brief of an amicus curiae.
25. The appendix to the briefs.
26. Filing and service of briefs.

27. Form of briefs and other papers — duplication.
28. Prehearing conference.
29. Oral argument.
30. Entry and notice of orders.
31. Interest on judgments.
32. Damages for appeal without merit.
33. Costs in civil cases.
34. Petitions for rehearing.
35. Notice and copy of decision — remittitur — mandate from United States supreme court.
36. Voluntary dismissal.
37. Substitution of parties in civil cases.
38. Cases involving constitutional questions where the state is not a party.
39. Calendar — withdrawal of records.
40. Appeals from injunction orders.
41. Renumbered Rule 51.
42. Renumbered Rule 52.
43. Renumbered Rule 53.
44. Certification of questions of law.
Rules 45 through 50 reserved.
51. Statutes and rules amended.
52. Applicability in general.
53. Title — effective date — statutes superseded.

Appendix of Forms

Form
1. Notice of appeal to the supreme court of the state of Montana from a judgment or order of a district court.
2. Affidavit to accompany motion for leave to appeal in forma pauperis.

Chapter Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.

Courts and judicial officers generally, Title 3, ch. 1.

Supreme Court, Title 3, ch. 2.

Appeal to Supreme Court, Title 25, ch. 12.

Appeal from District Court to Supreme Court, Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

Criminal appeals, Title 46, ch. 20.

I. Applicability of Rules

Rule 1. Scope of rules — from what judgment or order an appeal may be taken.

(a) These rules govern procedure in appeals in civil and criminal cases to the supreme court of Montana from Montana district courts and original proceedings in the supreme court of Montana. The party applying for original relief is known as the petitioner and the adverse party as the defendant. The party appealing is known as the appellant, and the adverse party as the respondent.

(b) In civil cases a party aggrieved may appeal from a judgment or order, except when expressly made final by law, in the following cases:

(1) From a final judgment entered in an action or special proceeding commenced in a district court, or brought into a district court from another court or administrative body.

(2) From an order granting a new trial; or refusing to permit an action to be maintained as a class action; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve an attachment; from an order changing or refusing to change the place of trial

when the county designated in the complaint is not the proper county; from an order appointing or refusing to appoint a receiver, or giving directions with respect to a receivership, or refusing to vacate an order appointing or affecting a receiver; from an order directing the delivery, transfer, or surrender of property; from any special order made after final judgment; and from such interlocutory judgments or orders, in actions for partition as determine the rights and interests of the respective parties and direct partition to be made. In any of the cases mentioned in this subdivision the supreme court, or a justice thereof, may stay all proceedings under the order appealed from, on such conditions as may seem proper.

(3) From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance for a widow or child; or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor, or administrator, or guardian; or refusing, allowing, directing the distribution or partition of any estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share; or confirming or refusing to confirm a report of an appraiser setting apart a homestead.

(c) All questions raised on an order overruling a motion for a new trial or on an order changing or refusing to change the place of trial under [R.C.M. 1947, section 93-2906, subdivision 4 thereof or] subsection (2) or (3) of section 25-2-201, Montana Code Annotated, may be raised and reviewed on an appeal from the judgment.

(d) Appeals may be taken in criminal cases as provided in sections 46-20-103 and 46-20-104, Montana Code Annotated.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Venue, Title 25, ch. 2.

New trial, Title 25, ch. 11.

Receivers, Title 25, ch. 14, part 2.

Determination by order whether class action to be maintained, Rule 23(c), M.R.Civ.P. (see Title 25, ch. 20).

Order granting new trial, Rule 59(f), M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Receivers, Rule 66, M.R.Civ.P. (see Title 25, ch. 20).

Rule 2. What the court may review on an appeal from a judgment.

(a) Upon appeal from a judgment in a civil case, the court may review the verdict or decision, and any intermediate order or decision excepted or objected to within the meaning of Rule 46 of the Montana Rules of Civil Procedure, which involves the merits, or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

(b) The scope of review in criminal cases is governed by sections 46-20-701 and 46-20-702, Montana Code Annotated.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Judgment to be on the merits, 25-9-101.

Rule 3. Suspension of the rules.

In the interest of expediting decision upon any matter before it, or for other good cause shown, the supreme court may, except as otherwise provided in Rule 21(b), suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

II. Appeals From Judgments and Orders of District Courts

Rule 4. How taken.

(a) Filing the notice of appeal. An appeal shall be taken by filing a notice of appeal in the district court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the supreme court deems appropriate, which may include dismissal of the appeal.

(b) Joint or consolidated appeals. If two or more persons are entitled to appeal from a judgment or order of a district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the supreme court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of the notice of appeal. The notice of appeal shall specify the party or parties taking the appeal; and shall designate the judgment, order or part thereof appealed from. Form 1 in the Appendix of Forms is a suggested form of notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) Service of notice of appeal. The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at the last known address of that party, and shall mail a copy of the notice of appeal to the clerk of the supreme court. The clerk of the district court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, such counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or a party's counsel. The clerk shall note in the docket the names of the parties to whom the clerk mails copies, with the date of mailing.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Notice of appeal to be served on Attorney General, 25-1-502.

Substitution of parties in civil cases, Rule 37, M.R.App.P.

Cases involving constitutional questions where the state is not a party, Rule 38, M.R.App.P.

Death or removal of attorney, 37-61-405.

Rule 5. Time for filing notice of appeal.

(a) Appeals in civil cases.

(1) In civil cases the notice of appeal required by Rule 4 shall be filed with the clerk of the district court within 30 days from the date of the entry of the judgment or order appealed from, except that in cases where service of notice of entry of judgment is required by Rule 77(d) of the Montana Rules of Civil Procedure the time shall be 30 days from the service of notice of entry of judgment; but if the State of Montana, or any political subdivision thereof, or an officer or agency thereof is a party the notice of appeal shall be filed within 60 days from the entry of the judgment or order or 60 days from the service of notice of the entry of judgment. If a notice of appeal is mistakenly filed in the supreme court, the clerk of the supreme court shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted.

(2) Except as provided in subsection (a)(4) of this Rule 5, a notice of appeal filed after the announcement of a decision or order but prior to the time that the appeal period begins to run under subsection (a)(1) of this Rule 5, i.e., before the entry of the order or judgment appealed from or the service of the notice of entry of judgment as the case may be, shall be treated as filed after such entry and on the day thereof.

(3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 5(a), whichever period last expires.

(4) If a timely motion under the Montana Rules of Civil Procedure is filed in the district court by any party: (i) for judgment under Rule 50(b); (ii) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) under Rule 59 to alter or amend the judgment; or (iv) under Rule 59 for a new trial , the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion, or if applicable, from the time such motion is deemed denied at the expiration of the 45-day period established by Rule 59(d), Montana Rules of Civil Procedure. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above, or if applicable, from the date of the expiration of the 45-day period established in Rule 59(d), Montana Rules of Civil Procedure. No additional fees shall be required for such filing.

(b) Appeals in criminal cases.

In criminal cases an appeal from a judgment must be taken within 60 days. An appeal from an order or judgment made appealable by section 46-20-103, Montana Code Annotated must be taken within 14 days.

(c) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than the 30 days after the expiration of the time prescribed by Rule 5(a) for civil cases and Rule 5(b) for criminal cases. Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

History: **En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. Mar. 26, 1993.**

Compiler's Comments

1993 Amendment: Substituted (c) concerning extension of time for filing a notice of appeal for former (5) that read: "The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 5(a). Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later."

Rule 6. Undertaking for costs on appeal in civil cases.

(a) The district court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to insure payment of costs on appeal in a civil case. The provisions of Rule 8(a) apply to a surety upon a bond given pursuant to this rule.

(b) No undertaking for costs is required in appeals in criminal cases.

History: **En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.**

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Costs in civil cases, Rule 33, M.R.App.P.

Rule 7. Stay of judgment or order pending appeal.

(a) [Stay upon entry of judgment—undertaking]. Upon entry of a judgment or order in a civil case a party may apply to the district court on notice or ex parte for a stay of the execution of the judgment or order. The court in its discretion may grant said stay for such period of time and under such conditions as the court deems proper, including restraining the party from disposing of, encumbering, or concealing the party's property. However, a district court's stay of execution, granted pursuant to this section, shall not be effective for more than 30 days following the district court's disposition of motions made pursuant to Rules 50(b), 52(b), 59 or 60(b) of the Montana Rules of Civil Procedure.

(b) Upon service of notice of appeal, if the appellant desires a stay of execution, the appellant must, unless the requirement is waived by the opposing party, present to the district court and secure its approval of a supersedeas bond which shall have two sureties or a corporate surety as may be authorized by law. The bond shall be conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment or order is affirmed, and to satisfy in full such modification of the judgment or order and such costs, interest, and damages as the supreme court may adjudge and award. When the judgment or order is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment or order remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the district court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment or order determines the disposition of property in controversy as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. On application, the supreme court in the interest of justice may suspend, modify, restore, or grant any order made under this subdivision.

(c) [Sale of perishable property]. If the judgment or order appealed from directs the sale of perishable property, the district court may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the supreme court.

(d) [Cases in which stay of proceedings not allowed]. No stay of proceedings shall be allowed upon a judgment or order which adjudges the defendant guilty of usurping, or intruding into, or unlawfully holding public office, civil or military, within this state; or which grants a writ of mandamus, or of prohibition, against a tribunal, corporation, public officer, or board, commanding certain acts to be done which ought to be done by such tribunal, corporation, public officer, or board, and not involving the payment or allowance of money or its equivalent.

(e) Stays in criminal cases are governed by sections 46-20-204 and 46-20-205, Montana Code Annotated.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Deposits in court — delivery to party, Title 25, ch. 8.

Stay of proceedings to enforce judgment, Rule 62, M.R.Civ.P. (see Title 25, ch. 20).

Costs in civil cases, Rule 33, M.R.App.P.

Claim and delivery, Title 27, ch. 17.

Mandamus, Title 27, ch. 26.

Writ of Prohibition, Title 27, ch. 27.

Quo warranto, Title 27, ch. 28.

Rule 8. Sureties and their justification.

(a) [Liability of surety—enforcement]. In cases where an undertaking on appeal or supersedeas bond with sureties is required, the provisions of sections 25-1-402, 25-13-105, 33-26-101, 33-26-102, and 72-31-101, Montana Code Annotated, apply. By entering into an undertaking on appeal or supersedeas bond given pursuant to Rules 6 and 7, the surety submits to the jurisdiction of the district court and irrevocably appoints the clerk of the district court as the surety's agent upon whom papers affecting the surety's liability on the bond or undertaking may be served. A surety's liability may be enforced on motion without the necessity of any independent action. The motion and such notice of the motion as the district court prescribed may be served on the clerk of that court, who shall forthwith mail copies to each surety whose address is known.

(b) [Justification of sureties]. A party may except to the sufficiency of the sureties to any bond or undertaking mentioned in this rule at any time within

30 days after the filing of such bond or undertaking; and unless they or other sureties, within 20 days after service of notice of such exception, justify before a judge of the district court, or the clerk thereof, upon 5 days' notice to the other parties of the time and place of justification, execution of the judgment or order appealed from is no longer stayed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 9. The record on appeal.

(a) Composition of the record on appeal. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

(b) The transcript of proceedings — duty of appellant to order — notice to respondent if partial transcript is ordered — costs of producing. Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary for inclusion in the record. The order shall be in writing and within the same period a copy shall be filed with the clerk of court. In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Any attorney who orders a transcript of the evidence shall be personally liable for the payment of the costs of the transcript. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory, or to support a specific finding of fact by the trial court, is to be raised on the appeal by the appellant, the appellant shall be under a duty to include in the transcript all evidence relevant to such verdict, answer or finding. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the respondent a description of the parts of the transcript which the appellant intends to include in the record and a statement of the issues which appellant intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary the respondent shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

Except as provided in subsection (c) of this rule, the cost of producing the transcript shall be paid by the appellant, or the appellant shall make satisfactory arrangements with the reporter for the payment of such cost; but, if the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, the appellant shall advise the respondent, and the district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

The reporter shall certify the correctness of the transcript.

(c) Transcript of proceedings in criminal cases—defendants without financial means—petition in supreme court.

(1) Upon imposition of any sentence in a criminal case, a defendant may file in the trial court a petition requesting that the defendant be furnished

with a transcript of the proceedings at defendant's trial. The petition shall be verified by the petitioner and shall state facts showing that the petitioner is at the time of filing the petition without financial means to pay for the transcript. If the trial judge who imposed sentence or in the trial judge's absence any judge of the court finds that the defendant is without financial means with which to obtain the transcript of the proceedings at defendant's trial, the judge shall order the official court reporter to transcribe an original and copy of the reporter's notes of the proceedings at the trial. The original of the report of proceedings shall be filed with the clerk of the trial court, and the copy shall be delivered to the defendant without charge.

(2) If the petition provided for in subsection (1) is denied by the trial court, a petition so to proceed may be filed in the supreme court within 30 days after entry of the denial. The petition shall be accompanied by a copy of the verification filed in the trial court and a copy of the statement of reasons for denial given by the trial court.

(d) Statement of the evidence or proceedings when no report was made or when the transcript is unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days from the hearing or trial or such time extended as the district court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the district judge who handled the proceedings, and as settled and approved shall be included by the clerk of the district court in the record on appeal. A judge may settle and approve such record after such judge ceases to be a judge. If such judge before the statement is settled and approved dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle and approve the statement, it shall be settled and approved in such manner as the supreme court may direct.

(e) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the supreme court as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Rule 10. Copies of the agreed statement may be filed as the appendix required by Rule 25.

(f) Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the supreme court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In (b) inserted second sentence concerning filing of copy and inserted fourth sentence concerning responsibility for cost of transcript.

Cross-References

Docket of District Court, 3-5-508.

Copy of proceedings by court reporter, 3-5-604.

Rule 10. Transmission of the record.

(a) Time for transmission — number of copies of transcript — duty of appellant. The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the supreme court within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under subdivision (c) of this rule. Three copies of each transcript must be lodged with the clerk of this court for filing. Promptly after filing the notice of appeal the appellant shall comply with the provisions of Rule 9(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is filed, each appellant shall comply with the provisions of Rule 9(b) and this subdivision, and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

(b) Duty of clerk to transmit the record. When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the supreme court. The clerk shall number the documents comprising the record and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. Documents in bulky containers shall not be transmitted by the clerk unless the clerk is directed to do so by a party or by the clerk of the supreme court. Physical exhibits other than documents or photographs shall not be transmitted by the clerk unless the clerk is ordered to do so by the supreme court. A party that desires a physical exhibit to be transmitted shall file a motion with the supreme court and serve it upon all appellate counsel and the clerk of the supreme court. The motion shall describe the nature of the exhibit, the reason it should be transmitted, and whether any measures should be taken to provide for security or to protect the chain of custody. A party must make advance arrangements with the clerk of the district court for the transportation of bulky or weighty exhibits and with the clerk of the supreme court for their receipt. Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the supreme court. The clerk of the district court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the supreme court.

(c) Extension of time for transmission of the record — reduction of time. The district court may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal. If the district court is without authority to grant the relief sought or has denied a request therefor, the supreme court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond the appellant's control or to circumstances which may be deemed excusable neglect. Such a motion shall be served upon all other parties to the appeal or review or upon their counsel if represented by such and also upon the district court judge who presided. The motion shall include whether or not previous extensions of time have been granted and if so, the total amount of time extended. If a request has previously been denied, the motion shall set forth the denial and state the reasons therefor, if any were given.

The district court or the supreme court may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

(d) Retention of the record in the district court by order of court. The supreme court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

If the record is retained in the district court by order of either court, the clerk of the district court shall retain it subject to the order of the supreme court, and transmission of the copy of the docket entries shall constitute transmission of the record.

(e) Stipulation of parties that parts of the record be retained in the district court. The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the supreme court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(f) Record for preliminary hearing in the supreme court. If prior to the time the record is transmitted a party desires to make in the supreme court a motion for dismissal, for a stay pending appeal, for additional security on the undertaking on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the district court at the request of any party shall transmit to the supreme court such parts of the original record as the party shall designate.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, June 30, 1981; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct.

Ord. Sept. 1, 1988, eff. Nov. 1, 1988; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. June 20, 1990, eff. June 20, 1990.

Cross-References

General duties of clerk, 3-5-501.

Rule 11. Docketing the appeal — filing of the record.

(a) Docketing the appeal. Within the time allowed or fixed for transmission of the record, the appellant shall pay to the clerk of the supreme court the fee for filing the record on appeal fixed by sections 3-2-403 and 3-2-404 of the Montana Code Annotated, and the clerk shall thereupon enter the appeal upon the docket. In criminal cases and other cases in which an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the district court with such addition as is necessary to indicate the identity of the appellant.

(b) Filing of the record. Upon receipt of the record by the clerk of the supreme court following its timely transmittal, and after the appeal has been timely docketed, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(c) Dismissal for failure of appellant to cause timely transmission or to docket appeal. If the appellant shall fail to cause timely transmission of the record or to pay the filing fee if a filing fee is required, any respondent may file a motion in the supreme court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and by proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal. The clerk shall docket the appeal for the purpose of permitting the court to entertain the motion, without requiring payment of the filing fee, but the appellant shall not be permitted to appear without payment of the fees unless the appellant is otherwise exempt therefrom. Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Fees to be collected by Clerk of Supreme Court, 3-2-403.

Rule 12. Effect of dismissal.

The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Motions for dismissal, Rule 22, M.R.App.P.

Consequences of failure to file brief, Rule 26(c), M.R.App.P.

Voluntary dismissal, Rule 36, M.R.App.P.

Rule 13. Acts of personal representatives or guardians valid when appointment vacated.

When the judgment or order appointing a personal representative or guardian is reversed on appeal, for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such personal representative or guardian, if such personal representative or guardian has qualified, are as valid as if such judgment or order had been affirmed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Qualifications of personal representative, Title 72, ch. 3, part 5.

Who may be a guardian — priorities, 72-5-312.

Rule 14. Ruling against respondent may be reviewed.

Whenever the record on appeal in a civil case shall contain any order, ruling, or proceeding of the trial court against the respondent, affecting the respondent's substantial rights on the appeal of said cause, together with any required objection or exception of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings, and the objections and exceptions thereto, and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. And no civil cause shall be reversed upon appeal by reason of any error committed by the trial court against the appellant, where the record shows that the same result would have been attained had such trial court not committed an error or errors against the respondent.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Rule 15. Remedial powers of the supreme court in civil cases.

In a civil case when the judgment or order is reversed or modified, the supreme court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on an appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have the appellant's action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Sale on execution of judgment, Title 25, ch. 13, part 7.

Rule 16. Remittitur must be certified to the clerk of the district court.

When judgment is rendered upon the appeal, it must be certified by the clerk of the supreme court to the clerk of the district court from which the appeal is taken. The clerk of the district court must enter at length in the records of the court the certificate received. Also, in cases of appeal from a judgment, the clerk must enter a minute of the judgment of the supreme court on the docket against the original entry; and in cases of appeal from an order, the clerk must enter a minute against the entry of the order appealed from, containing a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified by the supreme court on appeal.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

No petition for rehearing allowed when remittitur ordered, Rule 34, M.R.App.P.

Remittitur, when issued, Rule 35(b), M.R.App.P.

III. Original Proceedings — Extraordinary Writs

Rule 17. Acceptance and manner of conducting.

(a) When accepted. The supreme court is an appellate court but it is empowered by the constitution of Montana to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. The institution of such original proceedings in the supreme court is sometimes justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making due consideration in the trial courts and due appeal to this court an inadequate remedy, or when supervision of a trial court other than by appeal is deemed necessary or proper.

(b) How commenced and conducted. Proceedings commenced in the supreme court originally to obtain writs of habeas corpus, injunction, review, mandate, quo warranto, supervisory control, and other remedial writs or orders, shall be commenced and conducted in the manner prescribed by the applicable sections of the Montana Code Annotated for the conduct of such or analogous proceedings and by these additional rules. All papers filed shall conform to the requirements of Rule 27.

(c) Notice to district judge. An application for a writ or order and all further documents relating to a ruling of a district court must be served upon the district judge against whose ruling it is directed. Such application shall, in its title, contain the name of the district judge and the judicial district from which the ruling was issued.

(d) Applications — where and when filed. An original application may be made to the supreme court at any time. The moving party's application and all supporting documents shall be filed with the clerk of the supreme court.

(e) Applications — what to contain. The application for the issuance of the above writs or orders must set forth, in addition to the other requisite matters, the particular questions and issues anticipated or expected to be raised in the proceeding and also the fact which renders it necessary and proper that the writ should issue originally from the supreme court; the said matters will be taken into consideration by the court in determining the necessity and propriety of accepting jurisdiction and granting the alternative writ or order to show cause. Each application shall also set forth as exhibits, without repetition of title of court and cause, a copy of each judgment, order, notice, pleading, document proceeding or court minute referred to in the application, or which is necessary to make out a prima facie case or to substantiate the pleading or conclusion or legal effect. A memorandum or authorities must be filed with the application. Counsel shall file with the clerk of this court the original court file, unless for some reason the same is not available.

(f) Procedure. The supreme court shall consider an application for an extraordinary writ at the court's next court conference following the filing of the application. On the basis of the application filed, the court shall as promptly as possible, dismiss the petition, accept jurisdiction, or order a response reserving the question of jurisdiction. Only in extraordinary cases will the court grant oral argument to determine the necessity and propriety of accepting jurisdiction.

Unless oral argument is ordered by this court in order to establish jurisdiction, the court will enter an appropriate order forthwith. Such order may dismiss the petition, grant the relief requested, order a hearing on the application, or issue any other writ or order deemed appropriate in the circumstances.

(g) Oral argument. When ordered by this court, an adversary hearing on the application shall be held at the time fixed by the order. The oral argument shall be conducted in the same manner as in the argument of appeals, with the same time limits for presentation, and with the applicant opening and closing the argument.

(h) Briefs. In those cases in which oral argument is ordered, each party shall serve and file briefs in full conformance with Rules 20, 23, and 27, and containing a statement of the facts and of the points of law applicable, with the authorities relied upon.

All briefs shall be served and filed according to the time schedule set forth in the order, and in no event later than 24 hours prior to the time fixed for oral argument.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord., eff. Jan. 1, 1981; amd. Sup. Ct. Ord., eff. Feb. 1, 1992.

Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.

Types of jurisdiction, 3-2-201.

Original jurisdiction, 3-2-202.

Injunctions, 3-2-205; Title 27, ch. 19.

Certiorari — Writ of Review, 3-2-212; Title 27, ch. 25.

Habeas corpus, 3-2-212; Title 46, ch. 22.

Mandamus — Writ of Mandate, Title 27, ch. 26.

Writ of Prohibition, Title 27, ch. 27.

Quo warranto, Title 27, ch. 28.

IV. Appeals in Forma Pauperis

Rule 18. Applications and manner of proceeding.

(a) Application to district court. A party in a civil case who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed together with an affidavit showing, in the detail prescribed by Form 2 of the Appendix of Forms, the party's inability to pay the fees and costs of the appeal or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues the party intends to present on appeal. If the motion is granted, the party may proceed on appeal without further application to the supreme court and without payment of fees or costs or the giving of security therefor. If the motion is denied, the district court shall state the reasons for the denial.

(b) Application to the supreme court. If the motion for leave to proceed on appeal in forma pauperis is denied by the district court, a motion for leave so to proceed may be filed in the supreme court within 30 days after entry of the order of denial. The motion shall be accompanied by a copy of the affidavit filed in the district court and of the statement of reasons for denial given by the district court.

(c) Form of briefs, appendices and other papers. Parties allowed to proceed in forma pauperis may file briefs, appendices and other papers in typewritten form.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Poor persons not required to prepay fees in District Court, 25-10-404.

Form of briefs, Rule 27, M.R.App.P.

V. General Provisions

Rule 19. Record of commissions and oaths.

(a) Commissions and oaths. The commissions and oaths of the justices and the clerk of this court, and the attorney general shall be recorded in the records of this court.

(b) Minutes of court. The minutes of this court shall be approved by the chief justice (or in the chief justice's absence by the associate justice having the shortest term to serve), and attested by the clerk.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Oaths — form — before whom — when, 2-16-211.

Filing, 2-16-212.

Rule 20. Filing and service.

(a) Filing. Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with the judge, in which event the judge shall note thereon the dates of filing and shall thereafter transmit it to the clerk. Procedural motions may be filed by facsimile or other electronic means, provided the original document must be filed with the clerk within five business days of the receipt of the facsimile copy or the filing will be treated as void.

(b) Service of all papers required. Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for such party on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel. In criminal cases appealed by the defendant all transcripts, briefs, motions, and other papers shall be served on both the county attorney and the attorney general.

(c) Manner of service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of service. Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

(e) Number of copies to be filed. A signed original and seven copies of all motions (other than procedural motions), petitions for extraordinary writs or other original proceedings, petitions for rehearing, and the answers or responses thereto, shall be filed with the clerk of the supreme court unless otherwise ordered by the court. The original only of procedural motions shall be filed. The number of copies of transcripts shall be in accordance with Rule 10(a) and the number of copies of briefs shall be in accordance with Rule 26(b).

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. Sept. 1, 1988, eff. Nov. 1, 1988; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In (a) inserted last sentence concerning facsimile or electronic filing.

Cross-References

Duties of Clerk of Supreme Court, 3-2-402.
Fees, 3-2-403.
Duties of Marshal, 3-2-502.

Rule 21. Computation and extension of time.

(a) Computation of time. In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Extension of time. The court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, and may thereby permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; except the court in a civil case may not extend the time for filing a notice of appeal, except as provided in Rule 5. Within the text of each motion requesting an extension of time submitted to the court for its consideration, counsel shall note that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. All motions and orders for extension of time shall include a date certain on or before which date the act for which an extension of time is requested must be performed.

(c) Additional time after service by mail. Whenever a party is required or permitted to do any act within a prescribed period after service of a paper upon such party and the paper is served by mail, 3 days shall be added to the prescribed period.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In (a), in last sentence, increased time from 7 days to 11 days.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3.

Time, Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

Rule 22. Motions.

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. Counsel shall also note therein that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. The supreme court may authorize disposition of motions for procedural orders by a single judge. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the court may direct. Motions, supporting papers and any response thereto may be typewritten.

At the time of filing a procedural motion counsel shall present a proposed order, together with sufficient copies for service upon all counsel of record, as well as stamped envelopes addressed to all counsel of record.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 23. Briefs.

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case and its disposition in the court below, e.g.: "The plaintiff brought this action in the district court to recover damages for the wrongful death of the plaintiff's husband. The jury returned a verdict for the plaintiff. On motion of the defendant the trial judge entered judgment for the defendant n. o. v. on the ground that there was no evidence to support a finding of negligence on the part of the defendant. From this judgment the plaintiff appeals."

There shall follow a statement of the facts relevant to the issues presented for review, with references to the pages of the parts of the record at which material facts appear (see subdivision (e)).

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and pages of the record relied on.

(5) A short conclusion stating the precise relief sought.

(6) The judgment, order, findings of fact, conclusions of law, or decision in question, together with the memorandum opinion, if any, in support thereof. If an appendix is filed pursuant to Rule 25, the foregoing may be included therein.

(b) Answer brief of the respondent. The answer brief of the respondent shall conform to the requirements of subdivision (a) (1) to (4), except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

(c) Reply brief. The appellant may file a brief in reply to the brief of the respondent, and if the respondent has cross appealed, the respondent may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of court.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such formal designations as "appellant" and "respondent." It promotes clarity to use names or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) References in briefs to the record. Whenever a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e. g., Answer, p. 7; Motion for Summary Judgment, p. 3; Transcript, p. 231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

(f) Reproduction of statutes, rules, regulations, etc. If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form. No such reproduction is required, unless ordered by the supreme court. When the error alleged is to the charge of the court, the brief of the parties shall set out with appropriate transcript references the part referred to totidem verbis, whether it be directed to instructions given or instructions refused.

(g) Length of briefs and costs. Except by permission of the court, principal briefs shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. For purposes of assessing costs in civil cases under section 25-10-104, Montana Code Annotated, reasonable costs shall be limited as follows: For appellant's brief 50 pages; for respondent's brief 40 pages; for reply brief 15 pages. In addition, reasonable costs for briefs shall be limited to $250 for appellant's brief and $200 for respondent's brief. If a cross appeal is filed, the appellant will bear the original costs of the transcript.

(h) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party who first files a notice of appeal, or in the event that the notices are filed on the same day, the plaintiff in the proceeding below, shall be deemed the appellant for the purposes of this rule and Rules 25 and 26, unless the parties otherwise agree or the court otherwise orders. The brief of the respondent shall conform to the requirements of subdivision (a)(1) - (6) of this rule with respect to the respondent's cross-appeal as well as respond to the brief of the appellant except that a statement of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In (h), in first sentence after "filed", substituted "the party who first files a notice of appeal, or in the event that the notices are filed on the same day, the plaintiff in the proceeding below" for "the plaintiff in the court below" and substituted second sentence concerning respondent's brief for former sentence that read: "The brief of the respondent shall contain the issues and argument involved in the respondent's appeal as well as the answer to the brief of the appellant"; and made minor changes in style.

Cross-References

How costs on appeal claimed, 25-10-503.

Rule 24. Brief of an amicus curiae.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Rule 25. The appendix to the briefs.

(a) Use of an appendix. At the time before final decision, the supreme court may order an appendix to any brief. Also, either the appellant or respondent may, if the appellant or respondent deems it desirable, prepare, file and serve with the brief an appendix.

(b) Contents of the appendix. Unless otherwise ordered by the supreme court, an appendix shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant pleading and relevant given or refused jury instruction, finding and opinion; (3) the judgment, order, findings of fact, conclusions of law, or decision in question, together with the memorandum opinion, if any, in support thereof; and (4) such other parts of the record as any party deems it essential for the judges of the court to read in order to decide the issues presented. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference or examination and shall not engage in unnecessary designation.

(c) Arrangement of the appendix. At the beginning of the appendix there shall appear a chronological list of the parts of the record which it contains. Each part of the record shall be listed by the descriptive title given to that part by the reference made to it in the briefs. The page or pages of the appendix at which each part of the record thus listed appears shall be set out opposite each listing in a column at the right, so as to permit immediate location in the appendix of the parts of the record referred to in the briefs and contained in the appendix.

The relevant docket entries in the proceeding below shall follow the list of contents. Thereafter, the parts of the record shall be set out in chronological order. The original paging of each part of the record set out in the appendix shall be indicated by placing in brackets the number of the original page at the place where that page begins. Omissions in the text of papers or of testimony must be indicated by asterisks. A question and its answer may be contained in a single paragraph.

(d) Reproduction of exhibits. Exhibits may be contained in a separate volume, suitably indexed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Docket, 3-5-508.

Rule 26. Filing and service of briefs.

(a) Time for filing briefs. The appellant shall serve and file a brief within 30 days after the date on which the record is filed. The respondent shall serve and file an answer brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but, except for good cause shown, a reply brief must be served and filed at least 3 days before argument. If a cross appeal is filed and appellant desires to file a reply brief in appellant's appeal, appellant shall serve and file a combined reply brief in appellant's appeal and an answer brief in the cross appeal within 30 days after service of the brief of the respondent.

(b) Number of copies to be filed and served. A signed original and nine copies of each brief shall be filed with the clerk of the supreme court unless otherwise ordered by the court, and one copy of each brief shall be served on counsel for each party separately represented. The clerk will not accept a brief for filing unless it is accompanied by acknowledgment or proof of service as required by Rule 20.

(c) Consequences of failure to file briefs. If an appellant fails to file a brief within the time provided by this rule, or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file a brief, the respondent will not be heard at oral argument except by permission of the court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. Sept. 1, 1988, eff. Nov. 1, 1988; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Computation and extension of time, Rule 21, M.R.App.P.

Motions, Rule 22, M.R.App.P.

Rule 27. Form of briefs and other papers — duplication.

(a) Form of briefs, appendices, petitions, motions and other papers. Briefs, appendices, petitions, motions and other papers shall be produced by any standard printing process, by typewriter or by an equivalent process capable of producing a clear black image on paper. Such paper shall be standard quality, opaque, unglazed, acid-free, recycled paper, 25% cotton fiber content, with a minimum of 50% recycled content, of which 10% shall be post-consumer waste 8 ½“ X 11” in size, or standard quality, opaque, unglazed, white paper. After January 1, 1994, only on standard quality, opaque, unglazed, acid-free recycled paper, 25% cotton fiber content, a minimum of 50% recycled content of which 10% shall be post-consumer waste. All print must appear in at least 11 point type on opaque, unglazed paper. All of the foregoing papers shall have pages not exceeding 8 ½ by 11 inches with margins on the right side and on the top and bottom not less than 1 inch wide and on the left side not less than 1 ½ inches wide, provided, however, that papers from the proceeding below (pleadings, findings of fact and conclusions of law, judgments, exhibits and other like papers) may be (1) reproduced in their original form, size and print even though the papers exceed the foregoing size limitations, or (2) reproduced in their original form, but in a reduced size and print on pages not exceeding 8 ½ by 11 inches even though the print thereon is less than 11 point type, provided that the print is legible. Papers produced by typewriter or an equivalent process shall be double spaced except that footnotes and quoted and indented material may be single spaced. Pages shall be bound or attached on the left margin and numbered. Petitions, motions and other like papers filed with the clerk of the supreme court shall contain numbered lines.

(b) Duplication. All requirements of duplication may be satisfied by the use of any photocopy method capable of producing a clear black image on paper, but not including ordinary carbon copy, provided, that in each instance the duplication shall conform to the requirements of subdivision (a) of this rule as to paper, size, form and pagination. All papers and attachments thereto must be legible.

(c) First page and cover. The cover of the brief of the appellant shall be blue; that of the respondent, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, shall be white. Where a transparent cover is utilized, the underlying sheet must nevertheless conform to these color requirements. On the first page and cover of all papers must be stated the title of this court, the title of the case as in the court below, adding to the words "Plaintiff" and "Defendant," the words "Appellant" and "Respondent" as the case may require, the names of counsel for appellant and respondent, the title of the papers, as "Appellant's Brief," "Appendix to Appellant's Brief," etc., and the venue from which the appeal is taken.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. Mar. 25, 1993.

Compiler's Comments

1993 Amendment: In an order dated March 25, 1993, the Supreme Court in (a), near end of first sentence before "paper", deleted "white" and inserted second and third sentences concerning recyled paper; and in (b), in first sentence before "paper", deleted "white".

Cross-References

Appeals in forma pauperis — application and manner of proceeding, Rule 18, M.R.App.P.

Rule 28. Prehearing conference.

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceedings by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issue to those not disposed of by admission or agreements of counsel, and such order when entered controls the subsequent course of the proceedings, unless modified to prevent manifest injustice.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Rule 29. Oral argument.

(a) Notice of hearing — postponement. The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) Time allowed for argument. Upon oral argument of an appeal or original proceeding, 40 minutes will be allowed appellant or applicant and 30 minutes to respondent. If counsel is of the opinion that additional time is necessary for the adequate presentation of an argument, the counsel may request such additional time as the counsel deems necessary by motion filed reasonably in advance of the date fixed for hearing. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) Order and content of argument. The appellant or applicant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal at a single hearing, unless the court otherwise directs. If a case involves a cross-appeal, the party who first files a notice of appeal, or in the event that the notices are filed on the same day the plaintiff in the proceeding below, shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument at the hearing.

(e) Nonappearance of counsel — failure to file briefs. If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

(f) Submission on briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) Use of physical exhibits at hearing — removal. If physical exhibits other than documents are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the hearing. After the hearing counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.

Compiler's Comments

1993 Amendment: In (d), in second sentence after "cross-appeal", substituted "the party who first files a notice of appeal, or in the event that the notices are filed on the same day the plaintiff in the proceeding below" for "the plaintiff in the action below"; and made minor changes in style.

Cross-References

No argument on appeals from injunction orders, Rule 40, M.R.App.P.

Rule 30. Entry and notice of orders.

The notation of an order in the docket constitutes entry thereof. Upon entry of an order, the clerk shall promptly mail to all parties a copy of the order, and notice of the date of entry thereof.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 31. Interest on judgments.

If a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was rendered or made in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Clerk to include interest in judgment, 25-9-204.

Amount of interest, 25-9-205.

Interest on torts, 27-1-210.

Rule 32. Damages for appeal without merit.

If the supreme court is satisfied from the record and the presentation of the appeal in a civil case that the same was taken without substantial or reasonable grounds, such damages may be assessed on determination thereof as under the circumstances are deemed proper.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 33. Costs in civil cases.

(a) Costs on appeal. Costs on appeal in civil cases will be taxed as provided by section 25-10-104, Montana Code Annotated, and if not otherwise provided by the court in its decision, will automatically be awarded to the successful party against the other party. All costs on appeal shall be claimed as provided by section 25-10-503, Montana Code Annotated.

(b) Costs of briefs and appendices. The cost of printing or otherwise producing briefs and appendices shall be taxable at rates not higher than specified in Rule 23(g).

(c) Other costs taxable. Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing notice of appeal shall be taxed in the district court as costs of the appeal in favor of the party entitled to costs under this rule.

(d) Costs in original proceedings. Costs in original proceedings, including reviews other than by appeal, will be taxed as provided by Montana Code Annotated, sections 25-10-101, 25-10-102, 25-10-103, and 25-10-105, and if not otherwise provided by the court in its decision, will be awarded to the successful party against the other party; provided, however, that costs awarded to plaintiff or relator in special proceedings to review inferior court rulings, orders or judgments will ordinarily be assessed against the real party in interest, namely, the party interested in upholding the inferior court's action, rather than against the state, county, municipality, subdivision, judge or justice.

(e) Unnecessary costs. Whenever it appears that the successful party has caused any redundant, useless or unnecessary matter to be incorporated in the record, briefs, or appendices, whether on appeal or in a special proceeding, the successful party shall not recover as part of that party's costs so much of the expense as is occasioned thereby.

(f) Notation by clerk. The clerk of the supreme court shall, in all civil cases, include in the order of judgment of affirmance, reversal or modification on appeal, or for the issuance of a peremptory writ in an original proceeding, and in the remittitur, peremptory writ or judgment, a clause awarding the costs in accordance with this rule or the special order of this court, to be recovered after claim and ascertainment or taxation thereof in the manner prescribed by law; and the clerk shall also furnish therewith an itemized statement of such costs as have been paid by the clerk.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

When costs allowed, of course, to plaintiff, 25-10-101.

When costs allowed, of course, to defendant, 25-10-102.

Rule 34. Petitions for rehearing.

When, in appeals or special proceedings, it is ordered that remittitur, peremptory writ or judgment issue forthwith, no petition for rehearing will be entertained. In all other cases a petition for rehearing may be filed within 10 days after the decision of the supreme court has been rendered, unless the time is shortened or enlarged by order, and the adverse party shall have 7 days thereafter in which to serve and file objections thereto. Extensions of time will be granted only upon showing of unusual merit, and in no event in excess of 10 days. A petition for rehearing may be presented upon the following grounds and none other: That some fact, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the court, or that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed. Oral argument in support of the petition will not be permitted. Six copies of the petition and six copies of objections thereto, which may be in typewritten form, shall be filed with the clerk.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Remittitur must be certified to the Clerk of District Court, Rule 16, M.R.App.P.

Rule 35. Notice and copy of decision — remittitur — mandate from United States supreme court.

(a) Notice and copy of decision to be furnished. Upon the decision of a cause, notice thereof, together with a copy of the court's written decision, will immediately be mailed to counsel for each party.

(b) Remittitur — when issued — when copy of opinion to accompany. Remittitur may, in cases where it is deemed proper, be ordered forthwith; otherwise the same shall be issued promptly upon expiration of time for filing petition for rehearing, or, if such petition is filed, then upon the denial thereof, unless a modification of the decision is made which permits a further petition for rehearing. A copy of the opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.

(c) Mandate from United States supreme court — procedure thereon. Upon receipt by the clerk of the supreme court of Montana of a mandate from the supreme court of the United States in any case at law or in equity theretofore taken from the supreme court of Montana to the supreme court of the United States, it shall be the duty of said clerk forthwith to issue under the clerk's hand and the seal of the supreme court of Montana a remittitur to the district court by which the judgment was rendered, commanding such court to take such action in the premises as by the mandate shall be proper, and said remittitur shall also contain therein a recital in haec verba of the said mandate. In civil cases all the costs subsequent to the appeal from said district court shall be taxed in such remittitur.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Remittitur must be certified to the Clerk of District Court, Rule 16, M.R.App.P.

Rule 36. Voluntary dismissal.

If the parties to an appeal or other proceeding shall sign and file with the clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, and shall give to each party a copy of the agreement filed; but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the court. If an appeal has not been docketed the appeal may be dismissed by the court from which the appeal was taken upon the filing in that court of a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant. The clerk of the district court shall mail a copy of the order of dismissal to the clerk of the supreme court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Effect of dismissal, Rule 12, M.R.App.P.

Motions for dismissal, Rule 22, M.R.App.P.

Consequences of failure to file brief, Rule 26(c), M.R.App.P.

Rule 37. Substitution of parties in civil cases.

(a) Death of a party. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the supreme court in a civil case, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the supreme court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 20. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the supreme court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by such party's personal representative, or, if there is no personal representative, by such party's attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision.

(b) Substitution for other causes. If substitution of a party in the supreme court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) Public officers — death or separation from office.

(1) When a public officer is a party to an appeal or other proceeding in the supreme court in an official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and the public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding such public officer may be described as a party by the public officer's official title rather than by name; but the court may require the public officer's name to be added.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Cross-References

Vacancy and succession, Title 2, ch. 16, part 5.

Substitution of parties, Rule 25, M.R.Civ.P. (see Title 25, ch. 20).

Right to bring action and assert defense, Title 27, ch. 1, part 5.

When a party dies before action commenced, 27-2-404.

Rule 38. Cases involving constitutional questions where the state is not a party.

It shall be the duty of counsel who challenges the constitutionality of any act of the Montana legislature in any suit or proceeding in the supreme court to which the state of Montana, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record to give immediate notice in writing to the court of the existence of said question, specifying the section of the code or the chapter of the session law to be construed. The clerk shall thereupon certify such fact to the attorney general of the state of Montana.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Service of process on state, 2-9-313.

Duties of Attorney General, 2-15-201, 2-15-501.

Notice to Attorney General, Title 25, ch. 1, part 5.

Service required upon Attorney General, Rule 4D(2)(h), M.R.Civ.P. (see Title 25, ch. 20).

Attorney General to be notified of constitutional questions, Rule 24(c), M.R.Civ.P. (see Title 25, ch. 20).

Necessary parties, 27-8-301.

Rule 39. Calendar — withdrawal of records.

(a) Placing causes upon calendar. All causes shall be classified as provided in the Montana Supreme Court 1982 Internal Operating Rules as the same may be amended by the court.

(b) Setting causes for argument. Causes on the calendar upon which oral argument is allowed will be set for argument by the court in the chronological order in which they have been placed on the calendar, except for such causes as are determined entitled to precedence or as otherwise ordered by the court. Oral arguments will not be heard during the months of July and August.

(c) Advancement of causes. In calendaring appeals of civil cases from orders dissolving, refusing to dissolve, granting or refusing to grant writs of injunction, appeals from orders dissolving or refusing to dissolve attachments, appeals from orders appointing or refusing to appoint receivers, appeals from orders or judgments holding appellant in custody, and workmen's compensation appeals, are entitled to precedence and will, upon motion of either party, be advanced on the calendar. In calendaring appeals of criminal cases, causes against defendants held in custody will be set for argument by the court in advance of causes against defendants on bail unless for good cause the court otherwise orders.

(d) Permission to take record from clerk's office. The records and other papers of the supreme court shall not be taken therefrom except by counsel pursuant to a written order of a justice of the court, which order shall specify the time the same may be retained out of the clerk's office; provided, that the court or a justice thereof may require the same to be returned within a shorter period upon notice. The clerk shall preserve each order and counsel's receipt until the papers therein mentioned shall be returned.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Receivers, Rule 66, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 20.

Arrest and bail in civil actions, Title 27, ch. 16.

Prejudgment attachment, Title 27, ch. 18.

Injunctions, Title 27, ch. 19.

Workers' compensation, Title 39, ch. 71.

Appeals in abuse, neglect, or dependency proceedings and in parent-child legal relationship termination proceedings to be given precedence on calendar, 41-3-409, 41-3-612.

Rule 40. Appeals from injunction orders.

Upon appeal from an order dissolving or refusing an injunction, if the appellant desires to continue in force the injunction order dissolved by the district court, or to obtain such injunction order pending the appeal, the appellant shall apply to the district court under Rule 62 of the Montana Rules of Civil Procedure. In the event the relief there requested be not granted the appellant may file in the supreme court a sworn application, setting forth the proceedings appealed from and the relief desired, and present with it to the supreme court, a verified copy of the affidavits or evidence used on the hearing in the district court. Such application will be heard ex parte and without argument, and the court, upon such record will make such order in the premises as may be proper.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. June 20, 1990, eff. June 20, 1990.

Cross-References

Injunctions, 3-2-205; Title 27, ch. 19.

Rule 41. Renumbered Rule 51. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 42. Renumbered Rule 52. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 43. Renumbered Rule 53. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 44. Certification of questions of law.

(a) Power to answer. Whenever in an action pending in a United States court it shall appear that there is a controlling question of Montana law as to which there is a substantial ground for difference of opinion, a judge of the United States court wherein the action is pending may certify that the question upon which adjudication is sought is controlling in the federal litigation and the adjudication by the supreme court of Montana will materially advance ultimate termination of the federal litigation. Rendition of an answer by the supreme court of Montana to any such question of law certified to it is discretionary with the supreme court of Montana, and it may refuse to render an answer if it appears that there is another ground for determination of the case pending in the United States court, or if the question for adjudication is not clearly defined, or if the question is not adequately briefed or argued.

(b) Method of invoking. This rule may be invoked by a certification order of a United States court filed with the supreme court of Montana.

(c) Contents of certification order. A certification order shall set forth

(1) the questions of law to be answered; and

(2) a statement of all facts relevant to the questions certified and showing fully the nature of the controversy in which the questions arose.

(d) Preparation of certification order. The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the supreme court by the clerk of the certifying court under its official seal. The supreme court may require the original or copies of all or of any portion of the record before the certifying court to be filed with the certification order, if, in the opinion of the supreme court, the record or portion thereof may be necessary in answering the questions.

(e) Costs of certification. Fees and costs shall be the same as in civil appeals docketed before the supreme court and shall be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification.

(f) If any party to the action believes that the supreme court should refuse to answer the certification order, such party may file a motion to such effect within ten days after such party receives notice that the certification order has been filed with the supreme court. Thereafter Rule 22 will govern further procedure as to such motion.

(g) Briefs and arguments. Proceedings in the supreme court shall be those provided in the foregoing rules governing briefs and arguments.

(h) Opinion. The written opinion of the supreme court stating the law governing the questions certified shall be sent by the clerk under the seal of the supreme court to the certifying court and to the parties.

History: En. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rules 45 through 50 reserved.

Rule 51. Statutes and rules amended.

[This rule amended Rule 72 of the Montana Rules of Civil Procedure, and Montana Code Annotated, sections 25-9-301, 25-12-101, 25-12-102, 25-33-101, 25-33-205(2), 25-33-206, and 70-30-312. For text of amendments see the designated sections.]

History: Redes. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 52. Applicability in general.

(a) Special statutory proceedings. The statutory proceedings listed in Table A of the Montana Rules of Civil Procedure and any other special statutory proceedings, whether or not listed in said Table A, are excepted from these rules insofar as they are inconsistent or in conflict with the procedure and practice provided by these rules.

(b) Appeals to district courts. These rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, which shall govern procedure and practice relating thereto insofar as they are not inconsistent with these rules.

(c) Rules incorporated into statutes. Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding or listed in any table appended hereto, provides that any act in a proceeding in a district court or in the Montana supreme court shall be done in the manner provided by law or as in an action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, insofar as practicable.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. and redes. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Compiler's Comments

Table A: The Code Commissioner has not reprinted Table A in the MCA because it was never intended to be a complete listing, has not been updated since 1963, contains a high percentage of repealed sections, and is generally obsolete and not very useful. Interested persons may find it in the 1964 main volume of R.C.M. 1947, Vol. 7.

Rule 53. Title — effective date — statutes superseded.

(a) Title. These rules shall be known as the Montana Rules of Appellate Procedure and may be cited as M.R.App.P.

(b) Effective date and application to pending proceedings. These rules will take effect on January 1, 1966. They govern all appeals and original proceedings brought after they take effect, and also all further proceedings in appeals and original proceedings then pending, except to the extent that in the opinion of the supreme court their application in a particular appeal or original proceeding pending when the rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the appeal or original proceeding was brought applies.

(c) Statutes and rules superseded. Upon the taking effect of these rules all statutes and rules, and parts thereof, in conflict herewith, and the statutes and rules listed in Tables A, B, C, and D are superseded in respect of practice and procedure on appeals from the district courts to the supreme court and in original proceedings brought in the supreme court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. and redes. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Compiler's Comments

Tables A, B, C, and D: Tables A, B, C, and D can be found with the annotations for this rule.

Appendix of Forms

Form 1.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE STATE OF MONTANA FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

IN THE DISTRICT COURT OF THE .... JUDICIAL DISTRICT
OF THE STATE OF MONTANA,
IN AND FOR THE COUNTY OF ....

A.B., Plaintiff
vs. Notice of Appeal
C.D., Defendant

Notice is hereby given that C.D., defendant above-named, hereby appeals to the supreme court of the state of Montana (from the final judgment) (from the order (describing it)) entered in this action on the .... day of ...., 19...

(S) . . . .
. . . .
Attorney for C.D.
(Address)

Form 2.

AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

IN THE DISTRICT COURT OF THE .... JUDICIAL DISTRICT
OF THE STATE OF MONTANA,
IN AND FOR THE COUNTY OF ....

A.B., Plaintiff
vs.
C.D., Defendant

AFFIDAVIT IN SUPPORT OF APPLICATION TO PROCEED ON APPEAL WITHOUT PREPAYMENT OF COSTS

I, ..., being first duly sworn, depose and say that I am the .... in the above-entitled case; that in support of my application to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

. . . .

. . . .

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past 12 months.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

. . . .

Subscribed and Sworn to before me
this .... day of ...., 19....

. . . .
Notary Public

Let the applicant proceed without
prepayment of costs.

. . . .
District Judge

CHAPTER 22

MONTANA JUSTICE COURTS
RULES OF CIVIL PROCEDURE

(Superseded. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990)

CHAPTER 23

MONTANA JUSTICE AND CITY COURT RULES OF CIVIL PROCEDURE

Rule

1. Scope of rules.
2. One form of action.
3. Commencement of action.
4. Persons — jurisdiction — process — service.
5. Service and filing of pleadings and other papers.
6. Time.
7. Pleadings allowed.
8. Amendment of pleadings.
9. Motions and other papers.
10. Naming of parties to action.
11. Substitution of parties.
12. Joinder of claims and parties necessary for just adjudication.
13. Discovery.
14. Pretrial conferences.
15. Right to jury trial.
16. Failure to appear or proceed.
17. Costs.
18. Jury.
19. Order of trial.
20. Notice of trial.
21. Entry of judgment.
22. Relief from judgment.
23. Execution.
24. Appeal to district court.

Rule 1. Scope of rules. These rules govern the procedure in the justice or city courts of the state of Montana in all suits of a civil nature except in small claims actions and where otherwise provided by law. These rules must be construed to secure the just, speedy, and inexpensive determination of every action.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 2. One form of action. There is one form of civil action in the justice or city courts to be known as a "civil action".

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 3. Commencement of action. A civil action is begun by filing a complaint with the justice or city court. A concise written statement of the cause of action is considered a complaint. The party filing or the party's attorney shall sign the complaint.

A. PLACE OF TRIAL. The proper county for the trial of an action in justice or city court, subject to the right to change the place of trial, is determined as follows:

(1) In justice court.

(a) The trial may be held in any county of the state:

(i) in which the defendant or any one of the defendants resides or may be found and served with summons personally;

(ii) when the defendant is a nonresident of the state; or

(iii) when the parties voluntarily appear and plead without summons.

(b) Actions based on contract or other obligation. When the defendant or all of the defendants reside in a county other than that in which the right of action accrues and the action is for damages for violation of an express or implied contract or for money due on an express or implied contract, debt, note, or account, the action may be commenced and, subject to the provisions of Rule 3C, may be tried either in the county in which the contract or obligation must be performed or the money must be paid or in the county in which the defendant or any one of the defendants resides. The county in which the obligation is incurred is the county in which it is to be performed or paid unless there is a special contract to the contrary.

(c) Actions for damages for injury to person, property, or reputation. When the defendant or all of the defendants reside in a county other than that in which the right of action accrues and the action is for damages for injury to person, property, or reputation, the action may be commenced and, subject to the provisions of Rule 3C, may be tried either in the county where the injury was committed or in the county in which the defendant or any one of the defendants resides.

(d) Actions for taking or recovery of personal property. When the defendant or all of the defendants reside in a county other than that in which the right of action accrues and the action is for the recovery of personal property or its value or for damages for taking or detaining the personal property, the action may be commenced and, subject to the provisions of Rule 3C, may be tried in the county in which all or any part of the property is found, in which all or any part of the property was taken, or in which the defendant or any one of the defendants resides.

(e) Actions for forcible entry or unlawful detainer. An action for the recovery of the possession of real property must be commenced in the county in which all or any part of the real property affected by the action is situated.

(2) In city court.

(a) Generally. The trial may be held in any city in the state:

(i) in which the defendant or any one of the defendants resides or may be found and served with summons personally;

(ii) when the defendant is a nonresident of the state; or

(iii) when the parties voluntarily appear and plead without summons.

(b) Actions based on contract or other obligation. When the defendant or all of the defendants reside in a city other than that in which the right of action accrues and the action is for damages for violation of an express or implied contract or for money due on an express or implied contract, debt, note, or account, the action may be commenced and, subject to the provisions of Rule 3C, may be tried either in the city in which the contract or obligation must be performed or the money must be paid or in the city in which the defendant or any one of the defendants resides. The city in which the obligation is incurred is the city in which it is to be performed or paid unless there is a special contract to the contrary.

(c) Actions for damages for injury to person, property, or reputation. When the defendant or all of the defendants reside in a city other than that in which the right of action accrues and the action is for damages for injury to person, property, or reputation, the action may be commenced and, subject to the provisions of Rule 3C, may be tried in the city where the injury was committed or in which the defendant or any one of the defendants resides.

(d) Actions for taking or recovery of personal property. When the defendant or all of the defendants reside in a city other than that in which the right of action accrues and the action is for the recovery of personal property or its value or for damages for taking or detaining the personal property, the action may be commenced and, subject to the provisions of Rule 3C, may be tried in the city in which all or any part of the property is found, in which all or any part of the property was taken, or in which the defendant or any one of the defendants resides.

(e) Actions for forcible entry or unlawful detainer. An action for the recovery of the possession of real property must be commenced in the city in which all or any part of the real property affected by the action is situated.

B. IMPROPER PLACE OF TRIAL. When the county or city in which the complaint is filed is not the proper county or city for a place of trial, the complaint must be dismissed without prejudice. Justice and city courts may have concurrent jurisdiction under these rules.

C. CHANGE OF VENUE.

(1) When change of venue permitted. At any time before trial, the court may move to change the place of trial when:

(a) it appears to the satisfaction of the judge before whom the action is pending, by affidavit of either party, that the judge is a material witness for either party;

(b) a jury has been demanded and either party makes and files an affidavit that the party cannot have a fair and impartial trial because of the bias or prejudice of the citizens of the county, town, or city;

(c) the judge is disqualified from acting, except when supreme court rule prohibits the judge from acting to change the place of trial; or

(d) the judge is sick or unable to act.

(2) Content of affidavit. The affidavit referred to in Rule 3C(1) must state the facts.

(3) Limit on number of changes. The place of trial may not be changed on motion of the same party more than once upon the grounds specified in Rule 3C(1).

(4) When improper venue basis for appeal. If the objection that the action is brought in the wrong county or city is taken at trial and overruled, it may be the cause of a reversal on appeal and does not otherwise invalidate the judgment. If the objection is not taken at the trial, it is waived.

(5) Where action to be transferred. When the court orders the place of trial to be changed, the action must be transferred for trial to a court mutually agreeable to the parties or, if they do not agree, to another judge's court in the same county.

(6) Papers to be transmitted. After an order has been made transferring the action or proceeding to another court for trial and on payment by the applying party of all accrued costs, the judge ordering the transfer shall immediately transmit to the judge of the court to which the trial is transferred the pleadings and all papers in the action, together with a certified transcript from the docket of the proceedings.

(7) Jurisdiction of transferee court. From the time the order changing the place of trial is made, the court to which the action or proceeding is transferred has the same jurisdiction over it as though it had been originally commenced in that court.

(8) Notice of time and place of trial — pleading. On receipt of the papers, pleadings, and transcripts, the judge of the court to which the action or proceeding is transferred shall issue a notice stating the time and place of the trial and mail the notice to the parties at least 1 day before the time fixed for trial. If the defendant has not filed an answer, the court shall allow an answer to be filed.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 4. Persons — jurisdiction — process — service. A. PERSON. As used in this rule, the word "person", whether or not a United States citizen or resident of this state and whether or not organized under the laws of this state, includes:

(1) an individual, whether operating in the individual's own name or under a trade name;

(2) an individual's agent or personal representative;

(3) a corporation, business trust, estate, trust, partnership, or unincorporated association;

(4) any two or more persons having a joint or common interest; and

(5) any other legal or commercial entity.

B. JURISDICTION OF PERSONS.

(1) Subject to jurisdiction. All persons are subject to the jurisdiction of a justice or city court who are found within the county or city, respectively, or who can be served as provided in these rules.

(2) Acquisition of jurisdiction. A justice or city court may acquire jurisdiction over a person through service of process as provided in these rules, through the voluntary appearance in an action by a person, either personally or through an attorney, or through any other authorized officer, agent, or employee.

C. PROCESS.

(1) Summons — issuance. Upon the filing of the complaint, the judge or the clerk shall issue a summons upon request of a plaintiff. Separate or additional summons must be issued, upon request, against any parties designated in the original action or against any additional parties who may be brought into the action.

(2) Summons — form. The summons must be directed to the defendant and signed by the judge or clerk and must contain:

(a) the title of the court, the name of the county and city in which the action is commenced, and the names of the parties to the action;

(b) a direction that the defendant appear and file a written answer in the justice or city court within 20 days after service of summons and complaint, exclusive of the day of service, and serve a copy upon the plaintiff or the plaintiff's attorney;

(c) a statement that upon failure to appear and answer or assert a counterclaim, the plaintiff may take judgment against the defendant by default for the relief demanded in the complaint; and

(d) the name, address, and telephone number of the plaintiff or the plaintiff's attorney.

D. SERVICE OF PROCESS.

(1) By whom served.

(a) Service of all process must be made by a sheriff of the county where the party to be served is found, by a deputy, by a constable authorized by law, or by any other person 18 years of age or older who is not a party to the action.

(b) (i) A summons and complaint may also be served upon a defendant who is an individual, other than a minor or an incompetent person, or upon a domestic or foreign corporation or partnership or other unincorporated association by mailing a copy of the summons and complaint by first-class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 18-A, M.R.Civ.P., and a return envelope, postage prepaid, addressed to the sender. If an acknowledgment of service under this subsection is not received by the sender within 20 days after the date of mailing, service of the summons and complaint must be made by one of the persons specified in Rule 4D(1)(a) in the manner prescribed by Rule 4D(2) and (3).

(ii) If the person served does not complete and return the notice and acknowledgment of receipt of summons and complaint within the 20-day period, the court shall order the person to pay the costs of the personal service unless good cause is shown.

(iii) The notice and acknowledgment of receipt of the summons and complaint must be signed and dated. Service of the summons and complaint is complete on the date the defendant signs the acknowledgment.

(2) Personal service within court's jurisdiction.

(a) The plaintiff shall furnish the person making service with all necessary copies.

(b) Service must be made:

(i) upon an individual other than a minor or an incompetent person, by delivering a copy of the summons and complaint to the defendant personally or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, further notice as the statute requires must be given;

(ii) upon a minor, by delivering a copy of the summons and complaint to the minor and to the minor's guardian or guardian ad litem;

(iii) upon a person who has been adjudged of unsound mind by a court of this state or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to the person's guardian, if there is one residing in this state appointed and acting under the laws of this state. If there is no guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind but has not been so adjudged by a court of this state, the party may be brought into court by service of process personally. The court may also stay any action pending against the person on learning that the person is of unsound mind.

(iv) upon a domestic corporation, partnership or other unincorporated association, or a foreign corporation or partnership or other unincorporated association established by the laws of any other state or country, that had a place of business within this state or was doing business in this state either permanently or temporarily at the time the claim for relief accrued:

(A) by delivering a copy of the summons and complaint to an officer, director, superintendent, managing or general agent, partner, or associate for the corporation, partnership, or association or by leaving the copy at the office or place of business of the corporation, partnership, or association within the state with the person in charge of the office;

(B) by delivering a copy of the summons and complaint to the registered agent of the corporation named on the records of the secretary of state or to any other agent or attorney-in-fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney-in-fact is one designated by statute to receive service, any further notice required by statute must also be given;

(C) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then by leaving a copy of the summons and complaint at any office of the corporation, partnership, or unincorporated association within this state with the person in charge of the office; or

(D) if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy of the summons and complaint to a trustee for the corporation and to its stockholders or members.

(v) upon a city, village, town, school district, or public agency or board of such a public body, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor, or head of the legislative department of the public body;

(vi) upon an estate, by delivering a copy of the summons and complaint to the personal representative of the estate;

(vii) upon a trust, by delivering a copy of the summons and complaint to any trustee thereof.

(c) (i) When a claim for relief is pending in a justice or city court of this state against any of the following persons, the party causing the summons to be issued shall exercise reasonable diligence to ascertain the last-known address of:

(A) a corporation organized under the laws of this state or a corporation organized under the laws of any other state or country that has filed a copy of its charter in the office of the secretary of state of Montana and that is qualified to do business in Montana;

(B) a corporation organized under the laws of any other state or country that is subject to the jurisdiction of the justice or city courts of this state under the provisions of Rule 4B, even though the corporation has never qualified to do business in Montana; or

(C) a national banking corporation that, through insolvency or lapse of charter, has ceased to do business in Montana and when none of the persons designated in Rule 4D(2)(b)(iv) can with the exercise of reasonable diligence be found within Montana.

(ii) Upon the filing with the justice or city court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in Rule 4D(2)(b)(iv) can after due diligence be found within Montana, reciting the last-known address of any of those persons, or reciting that after the exercise of reasonable diligence no address for any of the persons could be found and after deposit with the justice or city court of the sum to be paid to the secretary of state as a fee for each of the defendants for whom the secretary of state is to receive service, the judge shall issue an order directing process to be served upon the secretary of state or, if absent from the office, upon the deputy secretary of state. The affidavit is sufficient evidence of the diligence of inquiry made by the affiant if it recites that diligent inquiry was made. The affidavit need not detail the facts constituting the inquiry.

(iii) The judge shall mail to the secretary of state the original summons, one copy each of the summons and the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service.

(iv) The secretary of state shall mail a copy of the summons and complaint by certified mail with a return receipt requested to the last-known address of any of the persons designated in Rule 4D(2)(b)(iv) or, if no address is known and the person is a corporation not organized in Montana, to the secretary of state of the state in which the corporation was originally incorporated, if known, and the secretary of state shall make the return as provided under Rule 4D(5).

(v) When service is made upon the secretary of state, it is considered personal service on the corporation, and the secretary of state, or the deputy when the secretary of state is absent from the office, is hereby appointed agent of the corporation for service of process.

(vi) In an action in which due diligence has been exercised to locate and serve any of the persons designated in Rule 4D(2)(b)(iv), service is considered complete upon the corporation regardless of the receipt or advice of refusal of the addressee to receive the process mailed, as required by Rule 4D(5).

(vii) When the service of process is made as provided in this subsection (2)(c) and there is no appearance thereafter made by an attorney for the corporation, service of all other notices required by law to be served in the action may be served on the secretary of state.

(3) Other service. All process in any form of action must be served in the manner specified in this rule, with the exception that whenever a statute of this state or an order of the court made pursuant to this rule or a statute provides for the service of a notice or an order in lieu of summons upon a person, service must be made under the circumstances and in the manner prescribed by the statute or order and with the further exception that all persons are required to comply with the provisions of 33-1-603, 33-1-613, 33-1-614, 33-2-314, and 33-2-315 when the action pertains to the provisions of those sections.

(4) Service by publication — when permitted — effect — manner — proof.

(a) When permitted. A defendant, whether known or unknown, who has not been served under this rule may be served by publication only when the subject of the action is real or personal property in this state and:

(i) the defendant has or claims a lien or interest, actual or contingent, in the real or personal property; or

(ii) the relief demanded consists wholly or partially in excluding the defendant from any interest in the real or personal property.

(b) Effect of service by publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree that will adjudicate any interest of the defendant in the status, property, or thing acted upon, but the court may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of pleading and affidavit for service by publication — order for publication.

(i) Before service of the summons by publication is authorized in any case, there must be filed with the judge or court clerk of the justice or city court in which the action is commenced:

(A) a pleading setting forth a claim in favor of the plaintiff and against the defendant as provided in Rule 4D(4)(a); and

(B) upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating:

(I) that the defendant resides out of the state, has departed from the state, cannot after due diligence be found within the state, or is concealed to avoid the service of summons; or

(II) if the defendant is a domestic or foreign corporation, that none of the persons designated in Rule 4D(2)(b)(iv) can after due diligence be found within the state; or

(III) if the defendant is an unknown claimant, that the plaintiff has made a diligent search and inquiry for all persons who claim or might claim any right or title to, estate or interest in, or lien or encumbrance upon all or any part of the property that is adverse to plaintiff's ownership or all persons who may cloud the plaintiff's title to the property, whether the claim or possible claim is present or contingent, including any right of dower, inchoate or accrued; and

(IV) that the plaintiff has specifically named as defendants in the action all persons whose names can be ascertained.

(ii) The affidavit is sufficient evidence of the diligence of any inquiry made by the affiant if the affidavit recites the fact that diligent inquiry was made. The affidavit need not detail the facts constituting the inquiry. If desired, it may be combined in one instrument with the affidavit required under Rule 4D(2)(c) after presenting to the court proof that a valid attachment or garnishment has been effected.

(iii) Upon complying with this subsection (c), the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the court clerk.

(d) Number of publications. Service of the summons by publication may be made by publishing the summons three times, once each week for 3 successive weeks, in a newspaper published in the county in which the action is pending. If no newspaper is published in the county, then the service of summons by publication must be made in a newspaper published in an adjoining county and having a general circulation in the county in which the action is pending.

(e) Mailing summons and complaint. At any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, a copy of the summons for publication and a copy of the complaint must be deposited in a post office in this state, postage prepaid, and directed to the defendant at the defendant's place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation and personal service cannot with due diligence be effected within Montana on any of the persons designated in Rule 4D(2)(b)(iv), then service may be completed on the corporation by service upon the secretary of state pursuant to the provisions of Rule 4D(2)(c).

(5) Service on secretary of state.

(a) (i) Whenever service is to be made upon certain corporations as provided in Rule 4D(2)(c), the requirements of that subsection must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed or is considered by law to have been appointed as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party or the party's attorney shall:

(A) make an affidavit stating the facts showing that the secretary of state is the agent and stating the residence and last-known post-office address of the person to be served;

(B) file the affidavit with the justice or city court in which the claim for relief is pending; and

(C) provide sufficient copies of the affidavit, summons, and complaint for service upon the secretary of state.

(ii) When there has been deposited with the justice or city court in which the claim for relief is pending the sum to be paid to the secretary of state as a fee for each of the defendants for whom the secretary of state is to receive service, then the judge shall mail to the secretary of state the original summons, one copy each of the summons and the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service.

(b) Service on the secretary of state is sufficient personal service upon the person to be served, provided that notice of the service and a copy of the summons and complaint are sent by certified mail by the secretary of state or deputy to the party to be served at the party's last-known address, marked "deliver to addressee only" and "return receipt requested", and provided further that the return receipt is received by the secretary of state and purports to have been signed by the addressee or the secretary of state is advised by the post office that delivery of the certified mail was refused by the addressee, except in those cases where compliance is excused under the provisions of Rule 4D(2)(c). The date the secretary of state receives the return receipt or receives advice by the post office that delivery of the certified mail was refused by the addressee is considered the date of service. As an alternative to sending the summons and complaint by certified mail, the secretary of state or deputy may cause a copy of the summons and complaint to be served by a qualified law enforcement officer, in accordance with the procedure set out in Rule 4D(1), (2), or (3).

(c) (i) The secretary of state or deputy shall make an original and two copies of an affidavit reciting:

(A) the fact of service upon the secretary of state by the justice or city court, including the day and hour of the service;

(B) the fact that a copy of the summons and complaint and notice has been mailed to the defendant, including the day and hour of the mailing, except in those cases where the secretary of state is relieved from doing so under the provisions of Rule 4D(2)(c), in which case the affidavit must so state; and

(C) the fact of the receipt of a return from the post office, including the date and hour of receipt, with a copy of the return to be attached to the affidavit.

(ii) The secretary of state or deputy shall then transmit the original summons and the original affidavit, along with a copy of the notice to the defendant if a notice is required, to the justice or city court in which the claim for relief is pending, where it must be filed in the claim for relief by the judge. The secretary of state shall also transmit to the attorney for the plaintiff a copy of the affidavit of the secretary of state, along with a copy of the notice to the defendant if a notice is required.

(iii) The secretary of state shall keep on file in the office a copy of the summons, a copy of the affidavit served on the secretary of state by the judge, and a copy of the affidavit executed and issued by the secretary of state.

(6) Continuance to allow defense. In any of the cases provided for in Rule 4D(2)(c), the court in which the claim for relief is pending may order a continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it considers just, the court may allow any process or proof of service to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process was issued.

(8) Proof of service.

(a) Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(i) if served by a constable or other officer, a certificate of service; or

(ii) if served by any other person, an affidavit of service; and

(iii) the written admission of the defendant showing the date and place of service.

(b) The certificate or affidavit of service mentioned in subsection (8)(a) must state the time, date, place, and manner of service.

(9) Contents of affidavit of service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff, constable, or person designated by law, the affidavit of service must state:

(a) that the person so serving is of legal age;

(b) the date and place of service; and

(c) that the person making the service knew the person served to be the person named and intended to be served.

(10) Procedure where only some of defendants served. If the summons is not served on all of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served and may at any time thereafter have a summons served against any defendant not served with the first process to cause that defendant to appear in court to show cause why that defendant should not be made a party to the judgment. Upon a defendant being duly served with the process, the court shall hear and determine the matter in the same manner as if the defendant had been originally brought into court, and the defendant must also be allowed the benefit of any payment or satisfaction that may have been made on the judgment before recovered.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 5. Service and filing of pleadings and other papers. A. WHEN MADE. Whenever a pleading permitted by Rule 7 is filed and served, the party served shall file and serve any further written pleading within 20 days after service unless the time period is extended pursuant to Rule 6B.

B. HOW MADE.

(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service must be made upon the attorney unless service upon the party personally is ordered by the judge.

(2) Service must be made by delivering a copy to the attorney, or to the party if so ordered, by mailing it to the attorney or party at the last-known address or, if no address is known, by delivering it to the judge.

(a) Delivery of a copy within this rule means:

(i) handing it to the attorney, or the party if so ordered;

(ii) leaving it at the attorney's office with a person in charge;

(iii) if there is no one in charge, leaving it in a conspicuous place in the office; or

(iv) if the office is closed or the person to be served has no office, by leaving it at the defendant's place of residence with a person of suitable age and discretion who resides there.

(b) Service by mail is complete upon mailing.

C. PROOF OF SERVICE. Proof of service must be made by an affidavit of the party or the party's attorney making service, by the certificate of the attorney making service, or by an acknowledgment in writing from the party or attorney served. The affidavit, certificate, or acknowledgment must be filed with the court.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 6. Time. A. COMPUTATION. When the computation of any period of time prescribed or allowed by these rules is by order of a court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run may not be included. The last day of the period so computed must be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

B. EXTENSION. When by these rules, by a notice given under these rules, or by order of a court an act is required or allowed to be done at or within a specified time, the judge for cause shown may extend the period if a motion is made before the expiration of the period originally prescribed or extended by previous permission of the court or after expiration of the specified period if failure to act was the result of excusable neglect.

C. ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has the right or is required to do an act or take a proceeding within a prescribed period after service of a notice or other paper and the notice or other paper is served by mail, 3 days must be added to the prescribed period.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 7. Pleadings allowed. In justice or city court there may be a complaint, answer, and counterclaim. No other pleadings are allowed, except that the court may order a reply to an answer or a counterclaim. A "motion" is not a "pleading".

A. COMPLAINT. The complaint is a concise written statement of the facts constituting the plaintiff's cause of action.

B. ANSWER. The answer may contain a general denial of any or all of the material facts stated in the complaint that the defendant believes to be untrue and also a statement, in plain or direct manner, of any other facts containing a defense or counterclaim upon which an action might be brought by the defendant against the plaintiff in a justice or city court.

C. COUNTERCLAIM. A defendant may file with the answer a counterclaim against the plaintiff arising out of an action or occurrence. The counterclaim must be a concise written statement of the facts constituting the defendant's cause of action and must be stated or the defendant waives the right to maintain an action for it against the plaintiff at a later time. However, the claim need not be stated if it is the subject of another pending action.

D. GENERAL RULES OF PLEADING.

(1) Form — pleadings in justice or city court. All pleadings must be in writing and filed with the court. They must be in a form that enables a person of common understanding to know what is intended.

(2) Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. A statement of fact in a pleading to which no responsive pleading is required or permitted must be taken as denied or avoided.

(3) New matter. New matter in the answer or counterclaim is considered denied by the plaintiff.

(4) Signing of pleadings. Every pleading of a party represented by an attorney must be signed by that attorney and must state the attorney's address and telephone number. A party who is not represented by an attorney shall sign the pleading and state the party's address and telephone number.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 8. Amendment of pleadings. A. WHEN ALLOWED. Amendment of pleadings is allowed by written motion at the discretion of the court.

B. ANSWER. A defendant shall file and serve an answer within 20 days of the service of an amended complaint.

C. LIMIT. No other pleading to an amended pleading may be allowed, except that the court may order a reply to the amended answer or counterclaim.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 9. Motions and other papers. A. APPLICATION. An application to the court for an order must be by motion, which, unless made during a hearing or trial, must be in writing. A motion must state with particularity the grounds for the motion and must set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing on the motion.

B. OPPOSITION. Any party opposing a motion must do so in writing within 10 days of service.

C. GENERAL RULES. The rules applicable to captions, signing, and other matters of form and the method and proof of service of pleadings apply to all motions and other papers provided for by these rules.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 10. Naming of parties to action. A. PARTIES.

(1) Actions must be prosecuted or defended in the name of the person who benefits from or is responsible for the satisfaction of any judgment rendered in justice or city court. That person is considered the real party in interest.

(2) A personal representative, administrator, guardian, conservator, fiduciary, bailee, trustee of an express trust, party with whom or in whose name a contract has been made for the benefit of another, or party authorized by statute may be named as a party to an action. In such a case, the pleadings must contain information concerning the circumstances or statute that enables the person to appear in the party's name and not in the name of the person for whose benefit the action is prosecuted or defended.

B. AMENDMENT — DISMISSAL. Until 5 days have passed from the date upon which a party is served with an order of the justice or city court requiring an amendment, an action may not be dismissed for the reason that the real party in interest is not named in the pleadings. A dismissal for failure to name the real party in interest must be without prejudice.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 11. Substitution of parties. A. SUBSTITUTION. If an original party to an action dies, becomes incompetent, transfers the party's interest, or is succeeded in office and the claim survives the absence of the original party, the justice or city court may order substitution of the proper party. The substitution is governed by Rule 10A.

B. FAILURE TO MAKE SUBSTITUTION. If substitution is not made within a reasonable time after being ordered, the action may be dismissed. Dismissal must be without prejudice.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 12. Joinder of claims and parties necessary for just adjudication. A. INVOLUNTARY JOINDER. A person subject to service of process must be joined if in the person's absence:

(1) complete relief cannot be accorded among those already parties;

(2) the person will not be able to protect the person's interest in the subject of the action; or

(3) there is the likelihood of double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest.

B. PERMISSIVE JOINDER. All persons may join in an action if they assert any right to relief, whether jointly or as individuals, arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or of fact common to all will arise in the action.

C. MISJOINDER. Misjoinder of parties not grounds for dismissal. The judge may add or drop parties by order either on motion of a party or on the judge's own initiative at any state of the proceedings and on terms that are just. Claims against a party or parties may be severed and proceed to separate trials as considered necessary by the judge in order to render a full adjudication of all claims in an orderly manner.

D. CLASS ACTIONS. Class actions may not be permitted in justice or city court proceedings.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 13. Discovery. A. SCOPE AND LIMITS. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) Parties may move for a hearing to obtain discovery through the use of motions to produce or through written interrogatories, or both, regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the parties seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought is inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) (a) The frequency or extent of use of the discovery set forth in this rule must be limited by the court if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the party's resources, and the importance of the issues at stake in the litigation.

(b) The court may act upon its own initiative after reasonable notice or pursuant to Rule 9 or 14.

(3) The type and extent of discovery, as well as the appropriate timeframes, must be determined by the court at the hearing.

B. DEPOSITIONS. Depositions to be used in justice or city courts must be taken as provided in Rules 26 and 28 through 30, M.R.Civ.P.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 14. Pretrial conferences. A. OBJECTIVES. In any action, the court may, in its discretion, direct the parties' attorneys or the parties to appear before it for one or more conferences before trial for the following purposes:

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be delayed because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial with more thorough preparation; and

(5) facilitating the settlement of the case.

B. SANCTIONS. If a party or a party's attorney fails to obey a pretrial order, if no appearance is made on behalf of a party at the pretrial conference, if a party or a party's attorney is substantially unprepared to participate in the conference, or if a party or a party's attorney fails to participate in good faith, the judge, upon the judge's own motion, may make orders as are just and may deal with the offending party pursuant to Title 3, chapter 10, part 4. In lieu of or in addition to any other sanction, the judge may require the party or the party's attorney, or both, to pay the reasonable expenses, including attorney fees, incurred because of any noncompliance with this rule unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 15. Right to jury trial. A. RIGHT PRESERVED. The right of a trial by jury as declared by The Constitution of the State of Montana or as given by statute must be preserved to the parties inviolate.

B. DEMAND. At any time after the commencement of the action and not later than 5 days after the service of the last pleading directed to the issue, a party may demand a trial by jury, as allowed by law, of any issue of fact by filing in the court and serving upon the other parties a written demand for a jury trial. The demand may be stated in a pleading of the party.

C. HOW WAIVED. A jury may be waived:

(1) by consent of the parties entered in the docket;

(2) by the failure of any party to demand a jury trial under this rule;

(3) by the failure of either party to appear at the time fixed for the trial of an issue of fact.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 16. Failure to appear or proceed. A. DEFENDANT. If a defendant fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party or parties.

B. PLAINTIFF. If a plaintiff fails to appear at the time fixed for trial, the judge shall dismiss the plaintiff's claim with prejudice and award costs to the defendant. The trial may proceed on any other pending claims of any other parties.

C. TIME. If a party fails to pursue disposition of a matter filed in a justice or city court in a timely manner, the court may, on it's own motion, dismiss the matter without prejudice. A dismissal at the court's discretion under this Rule 16C must be by written notice of the court to all parties and may not be made for at least 90 days after the last action. The notice must state that unless good cause is shown by a party or a party's attorney within 30 days of the court's notice, the matter must be dismissed without prejudice. If good cause is shown, in writing, by a party or a party's attorney, the court may set the matter for trial and no dismissal may be entered by the court.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 17. Costs. Jury fees and other costs as defined in 3-15-203 and Title 25, chapter 10, part 2, must be taxed as costs against the losing party as determined by the court.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 18. Jury. A. NUMBER OF JURORS. A jury in a justice or city court consists of six persons, but the parties may agree to fewer than six.

B. IMPANELING. The jury in a civil action in justice or city court must be impaneled as provided in 25-7-202 through 25-7-209 and 25-7-221 through 25-7-224. Where the words "clerk" or "district court" occur in those sections, the words refer to the justice or city court in application under this rule.

C. SICKNESS OF JUROR. If a juror becomes sick and is unable to perform the juror's duty after impaneling of the jury but before verdict, the judge may order the juror discharged and proceed with the other jurors, swear in an alternate juror, continue the case, or discharge the jury and impanel a new jury.

D. PREVENTION OF JURY FROM GIVING VERDICT. When a jury is discharged or prevented from giving a verdict by reason of accident or other cause during the course of the trial, the judge may try the action with another jury again at a future time.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 19. Order of trial. In a nonjury trial or in a jury trial after the jury has been impaneled, the trial must proceed in the following order, unless the court, for good cause, otherwise directs:

(1) The party on whom rests the burden of the issues may briefly state a case and the evidence by which the party expects to sustain it.

(2) The adverse party may next briefly state a defense and the evidence the party expects to offer in support of it, or the party may reserve the opening statement for the beginning of the case.

(3) The party on whom rests the burden of the issues must first produce evidence. The adverse party will then produce evidence.

(4) The parties will then be confined to rebutting evidence unless the court, for good reasons, in furtherance of justice, permits them to offer evidence in their original case.

(5) The court shall charge the jury with its duties, instructing it in all matters of law that it finds necessary for the jury's information in rendering a verdict. Proposed instructions may be offered to the court by the parties.

(6) (a) The order for final argument is plaintiff, defendant, and rebuttal by plaintiff of defendant's argument. No further argument is allowed. If several defendants having several defenses appear by different counsel, the court shall determine their relative order in the evidence and argument.

(b) In arguing the case to the jury, a party or counsel may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence in the case.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 20. Notice of trial. After all parties served with process have appeared or some have appeared and the remaining have been defaulted, the judge, upon request of any party, shall fix a day for trial of the cause and shall provide notice of the trial date to the plaintiffs and defendants who have appeared.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 21. Entry of judgment. A. GROUNDS. A judge shall enter judgment in the docket of the court in the following circumstances:

(1) Offer to compromise before trial. If the defendant, at any time before the trial, offers in writing to allow judgment to be taken against the defendant for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued. However, if the plaintiff does not accept the offer before the trial and fails to recover in the action a sum in excess of the offer, the plaintiff cannot recover costs. In such a case, costs must be adjudged against the plaintiff and, if the plaintiff recovers, be deducted from the plaintiff's recovery. The offer and failure to accept may not be given in evidence or affect the recovery except as to costs.

(2) Judgment of dismissal without prejudice. Judgment that the action be dismissed without prejudice to a new action may be entered with costs against the plaintiff in the following cases:

(a) when the plaintiff voluntarily dismissed the action, at or before the close of the plaintiff's evidence, when there is no counterclaim;

(b) when the plaintiff fails to amend the complaint within the time allowed by the court;

(c) when it is objected at the trial and appears by the evidence that the action is brought in the wrong county.

(3) Judgment by confession. Judgment by confession must be as provided for in Title 27, chapter 9.

(4) Judgment on pleadings. After the pleadings are closed but within a time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment and disposed of as provided in Rule 56, M.R.Civ.P. All parties must be given reasonable opportunity to present all material made pertinent to a motion by Rule 56, M.R.Civ.P.

(5) Upon verdict. After a trial by jury, the judge shall enter judgment at once in conformity with the verdict.

(6) After trial by judge. When the trial is by the judge, the judge shall enter judgment within 30 days.

(7) By default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the judge, upon written application or motion by the plaintiff, shall enter the default against the party. When a defendant has been defaulted for failure to appear and it is otherwise proper under these rules and the plaintiff's claim against the defendant is for a sum certain or for a sum that can by computation be made certain, the judge, upon the plaintiff's written request stating the amount due, shall enter judgment for that amount and costs against the defaulted defendant. In all cases the party entitled to a

judgment of default shall apply to the court for the judgment. If in order to enable the court to enter judgment or to carry it into effect it is necessary to take an account or to determine the amount of damages, to establish the truth of any averment by evidence, or to make an investigation of any other matter, the court may conduct hearings or order references it considers necessary and proper and shall accord a right of trial by jury to the parties as required by statute.

B. MULTIPLE DEFENDANTS. The court shall enter judgment only against those over whom it has obtained jurisdiction.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; Rule 21C disapproved, Sec. 3, Ch. 285, L. 1991.

Rule 22. Relief from judgment. A. RELIEF. A judge may, on such terms as may be just and on the payment of costs, relieve a party from any judgment taken against the party by mistake, inadvertence, surprise, or excusable neglect, but the application for relief must be made within 30 days after entry of the judgment and upon an affidavit showing good cause for it. The party applying for relief shall serve the application and give notice of hearing to all other parties. The court shall set a hearing within 10 days after receipt of the application.

B. CLERICAL MISTAKES. Clerical mistakes or errors arising from oversight or omission in pleadings, judgments, orders, and other parts of the record may be corrected by the court at any time on its own initiative or on the motion of any party and after any notice the court may order.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 23. Execution. A. HOW ENFORCED.

(1) By justice or city court. A judgment may be enforced within the county or city in which the judgment was obtained by a writ of execution issued by the justice or city court.

(2) Issuance of execution by clerk of justice's court. From the time of docketing in the clerk's office, execution may be issued thereon by the clerk to the sheriff of any county in the state.

B. TIME. The party in whose favor judgment is entered may request a writ of execution for its enforcement against the personal property of the judgment debtor. At any time within 6 years from the entry of judgment or within the time extended pursuant to 25-13-102, the justice of the peace or city judge who entered the judgment or the successor in office shall issue the writ upon request.

C. FORM AND CONTENT OF EXECUTION. Determination of the amount of the judgment outstanding and the type, kind, description, and location of the personal property of the judgment debtor is the exclusive duty of the judgment creditor. The execution must be directed to the sheriff, a constable, or a levying officer of the county and must be subscribed by the judge and bear the date of its issuance. The execution must contain the following information and may be in the following form:

IN JUSTICE/CITY COURT, ..., ... COUNTY, MONTANA

BEFORE .... JUSTICE OF THE PEACE
.... CITY JUDGE

. . . .)
. . . .) Case No. ......
Plaintiff)
vs.) EXECUTION
. . . .)
. . . .)
Defendant

THE STATE OF MONTANA TO THE SHERIFF, A CONSTABLE, OR A LEVYING OFFICER OF .... COUNTY:

WHEREAS, on the ...... day of ...., 19...., ... recovered a judgment in the said Justice/City Court against .... as follows:

Original or Balance Due on Judgment in the amount of	$ . . . .
Together with accrued interest at ...% per annum on the Judgment	$ . . . .
Costs & Disbursements Accrued	$ . . . .
Credits	$ . . . .
Total sum due & owing at date of this execution	$ . . . .

Together with all costs of execution (and) (or) for personal property described as follows:

. . . .
. . . .

(Attach description if necessary)

NOW, you, the sheriff, constable, or levying officer, are hereby required to make this sum due on the judgment or damages, with interest, costs, and accruing costs, to satisfy the judgment out of the PERSONAL PROPERTY of the debtor NOT EXEMPT FROM EXECUTION on the day on which the judgment was docketed in the county, or at any time hereafter, and return this writ within ...... days after your receipt of it, with what you have done endorsed thereon.

Given under my hand this ...... day of ...., 19.....

. . . .
Justice of the Peace
. . . .
City Judge.

D. RENEWAL. If a writ of execution is returned unsatisfied or partially satisfied, a new writ may be issued for the unsatisfied portion of the judgment, together with costs and interest. No new or additional writ may be issued until any outstanding issued writ, together with the return thereon, is returned to the issuing court.

E. SUPPLEMENTAL PROCEEDINGS. Proceedings supplementary to execution set out in 25-13-502, 25-14-101 through 25-14-105, 25-14-107, and 25-14-108 are applicable to justice or city courts, the word "constable" being substituted for the word "sheriff" and the words "justice or city judge" being substituted for the word "judge".

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; Rule 23(2) disapproved, Sec. 3, Ch. 285, L. 1991; amd. Sup. Ct. Ord. July 24, 1991, eff. Oct. 1, 1991.

Rule 24. Appeal to district court. Appeals from a justice or city court to a district court are governed by Title 25, chapter 33, except that the undertaking on appeal, when the judgment is for the payment of money, may be in the form of an appeal bond or a deposit of money in a sum equal to the amount of the judgment, including costs.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

CHAPTER 24

MONTANA UNIFORM RULES FOR THE JUSTICE AND CITY COURTS

Rule

1. Scope of rules.
2. Files and exhibits.
3. Docket and index.
4. Form and quality of paper filed.
5. Motions.
6. Ex parte matters.
7. Presenting orders etc.
8. Witnesses subpoenas.
9. Duty to make service.
10. Filing of discovery.
11. Request for jury trial.
12. Decorum.
13. Representation.
14. Office hours.
15. Pre-trial conference.
16. Payment of bonds.
17. Continuances.
18. Mechanical recordings.
19. Jury instructions.
20. Voir dire.
21. Time computation.

Rule 1. Scope of rules.

(a) These rules, together with the Montana Justice and City Court Rules of Civil Procedure, govern the practice in all justice and city courts of the State of Montana.

(b) No local rules shall be adopted in conflict with these rules.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 2. Files and exhibits.

(a) The clerk of court is the custodian of the files of the court. No file shall be taken from the office of the clerk of court without the consent of the judge.

(b) Every exhibit placed on file or offered in evidence shall be held in the custody of the clerk. Unless there be good reason why the original of an exhibit should be retained, upon application, the court may order a copy filed in its place. Public records offered in evidence may be withdrawn at the conclusion of the hearing on order of the court.

(c) Exhibits may be withdrawn by the party offering them thirty days after a judgment has become final. Forty-five days after a judgment has become final the clerk may apply to the court for an order to dispose of exhibits, and shall notify the parties of said application. Twenty days after mailing of said notice the court may enter its order authorizing the clerk to dispose of exhibits.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 3. Docket and index.

(a) The clerk of court shall assign each citation and complaint a docket number. All docket numbers shall be in numerical order.

(b) The clerk of court shall maintain an alphabetical index to the docket as provided under Section 3-10-503, MCA.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 4. Form and quality of paper filed.

(a) All papers, except the Uniform Complaint and Notice to Appear, shall be written in ink or typed on a good grade of white paper 8 1/2“ by 11” in size.

(b) At the upper left margin of the first page of all papers filed with the court, shall be the name, address and telephone number of the responsible attorney or party. Below the responsible party information shall appear the title of the court, the case title and the docket number.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 5. Motions.

(a) All motions or application for orders in civil or criminal cases must be made in writing as required by Rule 9 of the Montana Justice and City Court Rules of Civil Procedure. This rule does not apply to motions made during the progress of a trial.

(b) At the time of filing the motion, there shall be filed supporting affidavits or documents, if referred to in the motion or notice of motion.

(c) Failure to file briefs may subject the motion to summary ruling. Failure to file a brief within five days by the moving party shall be deemed an admission that the motion is without merit. Failure to file an answer brief by the adverse party within ten days shall be deemed an admission that the motion is well taken. Reply briefs are optional and failure to file will not subject a motion to summary ruling.

(d) The court may order oral argument on the motion.

(e) Unless oral argument is ordered, or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of the applicable time limits.

(f) The requirement of a brief is fulfilled by a written statement or summary setting forth the facts and basis of the motion. The brief may be made a part of or attached to the motion.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 6. Ex parte matters.

All requests for extension of time or continuances and other permissible ex parte matters shall be in writing. The request must provide that the opposing party has been contacted and given reasonable notice of:

(a) the time and place of the ex parte conference or meeting,
(b) the substance of the order sought, and
(c) whether the party opposes the matter.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 7. Presenting orders etc.

(a) It shall be the duty of a party obtaining any order, judgment, warrant, summons, subpoena or like order to present the same in written form for the signature of the judge at the time of applying for the same.

(b) Two copies of any order, warrant, summons, subpoena, or like order requiring service shall be presented to the judge for signature, both shall be signed by the judge as original orders. One shall be retained as part of the court file, and the other used for service and returned to the court after service.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 8. Witnesses subpoenas.

(a) When a case is set for trial the parties shall file with the court a written request for subpoenas for all known witnesses, and for any additional witnesses as soon as they are ascertained.

(b) The requesting party shall cause the subpoenas to be served as provided by law.

(c) No motion for continuance will be entertained unless a substantial compliance with this rule is shown.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 9. Duty to make service.

(a) It shall be the duty of the parties when personal service is required of an order, warrant, summons, subpoenas, or any such order, to cause it to be delivered to the chief of police, sheriff or other qualified person for service.

(b) It shall be the duty of the parties in all cases to simultaneously serve their adversaries with a copy of all motions, pleas and briefs on the same day as filing with the court.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 10. Filing of discovery.

Depositions upon oral or written examinations, interrogatories and answers thereto, requests for production of documents and responses thereto, shall not be routinely filed. When any motion is filed making reference to discovery, the party filing the motion shall submit with the motion relevant unfiled documents.

History: **En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.**

Rule 11. Request for jury trial.

A request for a jury trial made within seven (7) days of the time set for trial may be treated by the court as a motion for continuance and the trial date vacated and reset.

History: **En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.**

Rule 12. Decorum.

(a) When the court convenes all persons in attendance in the courtroom shall rise until the judge has taken the bench.

(b) The judge of the court shall, when presiding in open court, wear judicial robes.

(c) All persons shall, when in the courtroom, wear appropriate clothing.

History: **En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.**

Rule 13. Representation.

(a) A party may represent oneself, or be represented by counsel.

(b) No representation can be made on behalf of a party by another person except an attorney duly licensed by the State of Montana. A nonresident attorney may be permitted to represent a party upon motion of a licensed resident attorney as provided for under Section 37-61-208, MCA.

(c) Death or removal of an attorney shall be governed by Rule 10 of the Uniform District Court Rules.

History: **En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.**

Rule 14. Office hours.

(a) On judicial days, regular office hours shall be designated by the court for the transaction of business. Notice of the hours shall be posted in the office of the clerk of court.

(b) The court shall establish a regular time for initial appearances and arraignments on traffic and criminal actions. Notice of the time set shall be posted in the office of the clerk of court.

History: **En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.**

Rule 15. Pre-trial conference.

(a) Pre-trials conferences and omnibus hearings shall be governed by Rule 14 of the Montana Justice and City Court Rules of Civil Procedure.

(b) Unless otherwise ordered by the court no pre-trial conference will be set. A party may request a pre trial conference not less than seven (7) days before trial.

(c) An attorney representing a party at a pre-trial conference shall appear with sufficient authority from the party so as to expedite the settlement of the action.

History: **En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.**

Rule 16. Payment of bonds.

(a) Bonds established by the judge in a schedule of bail for offenses may be paid to the clerk of court during business hours on every day except nonjudicial days. The schedule of bail shall be posted in the office of the clerk of court.

(b) Bonds shall only be returned in the name of the person who deposited the same.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 17. Continuances.

(a) A continuance or resetting of a trial or hearing may be granted upon a showing of good cause. The motion for continuance must be made in writing.

(b) No continuance will be granted if not timely made. A continuance will not be granted if a party appears at the time set for a hearing or trial unprepared.

(c) A continuance will not be granted except for good cause, without timely notice given to all parties.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 18. Mechanical recordings.

Court proceedings shall not be mechanically or electronically recorded without knowledge of the judge.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 19. Jury instructions.

(a) In criminal actions, the general criminal jury instruction set forth in section 400.509 of the Montana Judges Deskbook: Municipal, Justice and City Courts shall be given.

(b) In civil actions the general civil jury instruction set forth in section 400.505 of the Montana Judges Deskbook: Municipal, Justice and City Courts shall be given.

(c) Any party may request special jury instructions. All proposed jury instructions and verdict forms must be delivered to the court in duplicate and a copy served upon all opposing parties not less than twenty-four (24) hours before trial.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 20. Voir dire.

Unless for good cause shown, voir dire examination shall be limited to thirty (30) minutes for each party. Requests for additional time are to be made prior to voir dire examination.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 21. Time computation.

(a) Time shall be computed as provided under Rule 6 of the Montana Justice and City Courts Rules of Civil Procedure.

(b) When the period of time prescribed or allowed is ten days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

CHAPTERS 25 THROUGH 29

RESERVED

CHAPTER 30

PROCEDURE IN MUNICIPAL COURTS

Part 1 — General Provisions

25-30-101. Applicability of district court and justice's court rules.
25-30-102. Fees and fines.
25-30-103. Summons — time for answer.
25-30-104. Reply to counterclaim or new matter.
25-30-105. Jury trial.
25-30-106. Judgments.
25-30-107. Costs.
25-30-108. Appeals.

Chapter Cross-References

"Judicial officer" as including Municipal Judge, 1-1-202(2).

Officers who may administer oaths, 1-6-101.

Courts and judicial officers generally, Title 3, ch. 1.

Restrictions on Municipal Court Judges, 3-1-604.

Municipal Courts, Title 3, ch. 6.

Civil actions — form and commencement, Title 25, ch. 1, part 1.

Criminal procedure in Municipal Court, Title 25, ch. 30.

Concurrent jurisdiction with youth court, 41-5-203.

Part 1

General Provisions

25-30-101. Applicability of district court and justice's court rules. (1) The provisions of 3-10-222, 3-10-231 through 3-10-234, and 3-10-704 through 3-10-706; 25-31-102(2), 25-31-115, 25-31-402, 25-31-405, parts 7 through 11 of chapter 31 of this title (except 25-31-1002), and chapter 33 of this title; and chapter 9, part 10 of chapter 16, chapter 17, and part 15 of chapter 18 of Title 27 are applicable to municipal courts except when they are inconsistent with the provisions of this chapter and chapter 6 of Title 3, the words "municipal court" being substituted for justice's court and "judge" for justice of the peace.

(2) Except as otherwise provided by this chapter, chapter 6 of Title 3, and the supreme court's rules on disqualification of judges, the proceedings and practice in municipal court must be the same as in district court.

History: (1)En. Sec. 11, Ch. 177, L. 1935; re-en. Sec. 5094.11, R.C.M. 1935; amd. Sec. 9, Ch. 344, L. 1977; amd. Sec. 8, Ch. 429, L. 1977; Sec. 11-1711, R.C.M. 1947; (2)En. Sec. 20, Ch. 177, L. 1935; re-en. Sec. 5094.19, R.C.M. 1935; Sec. 11-1719, R.C.M. 1947; R.C.M. 1947, 11-1711(1), 11-1719(part); amd. Sec. 2, Ch. 409, L. 1979; amd. Sec. 111, Ch. 575, L. 1981; amd. Sec. 24, Ch. 16, L. 1991.

25-30-102. Fees and fines. The fees and fines in municipal court shall be the same as the fees and fines provided by law or ordinance, and all fees and fines collected by the court shall be paid into the city treasury.

History: En. Sec. 18, Ch. 177, L. 1935; re-en. Sec. 5094.18, R.C.M. 1935; amd. Sec. 10, Ch. 429, L. 1977; R.C.M. 1947, 11-1718.

25-30-103. Summons — time for answer. The summons in municipal court shall be signed by the clerk and shall conform to the provisions of M.R.Civ.P., Rules 4 and 12(a), except that the time for answering is 10 days.

History: En. Sec. 10, Ch. 177, L. 1935; re-en. Sec. 5094.10, R.C.M. 1935; amd. Sec. 8, Ch. 344, L. 1977; amd. Sec. 7, Ch. 429, L. 1977; R.C.M. 1947, 11-1710.

25-30-104. Reply to counterclaim or new matter. Whenever the answer contains a counterclaim or any new matter, the plaintiff shall within 5 days after the service and filing of the answer reply to the counterclaim or new matter in the manner and form provided for in M.R.Civ.P., Rules 7(a), 8(e)(2), and 10(b).

History: En. Sec. 11, Ch. 177, L. 1935; re-en. Sec. 5094.11, R.C.M. 1935; amd. Sec. 9, Ch. 344, L. 1977; amd. Sec. 8, Ch. 429, L. 1977; R.C.M. 1947, 11-1711(2).

25-30-105. Jury trial. In civil causes arising under the state law, either party shall be entitled to a jury trial, as provided in justices' courts, except that the police officer shall perform the duties thereto prescribed to the sheriff or constable.

History: En. Sec. 15, Ch. 177, L. 1935; re-en. Sec. 5094.15, R.C.M. 1935; R.C.M. 1947, 11-1715(part).

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Officers of the court, 3-6-303.

Trial in Justice's Court, Title 25, ch. 31, part 8.

25-30-106. Judgments. In civil causes, judgments in municipal court shall be made and entered as in district court and shall be of like tenor and effect.

History: En. Sec. 12, Ch. 177, L. 1935; re-en. Sec. 5094.12, R.C.M. 1935; R.C.M. 1947, 11-1712.

Cross-References

Judgment, Title 25, ch. 9.

Execution of judgment, Title 25, ch. 13.

Judgment — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

25-30-107. Costs. The same costs shall be allowed as are allowed in justices' courts and shall be taxed and retaxed as in district court, 24 hours being allowed for filing memorandum of costs.

History: En. Sec. 14, Ch. 177, L. 1935; re-en. Sec. 5094.14, R.C.M. 1935; R.C.M. 1947, 11-1714.

Cross-References

Costs, Title 25, ch. 10; Rule 54(d), M.R.Civ.P. (see Title 25, ch. 20).

Entry of judgment not to be delayed for costs, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

25-30-108. Appeals. (1) A party may appeal to district court from a judgment of municipal court.

(2) Appeal from a municipal court may be limited by requiring by ordinance that a minimum amount in controversy, not to exceed $200, be met before the district court has jurisdiction to hear the appeal, except upon petition by an aggrieved party, the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

History: En. Sec. 17, Ch. 177, L. 1935; re-en. Sec. 5094.17, R.C.M. 1935; amd. Sec. 9, Ch. 429, L. 1977; R.C.M. 1947, 11-1717(part).

Cross-References

Kinds of District Court jurisdiction, 3-5-301.

Appellate jurisdiction of District Court, 3-5-303.

Municipal Court to establish rules for appeals, 3-6-104.

CHAPTER 31

PROCEDURE IN JUSTICES' COURTS

Part 1 — General Provisions

25-31-101. Issues which cannot be presented in justice's court.
25-31-102. Transfer to district court — dismissal.
25-31-103 through 25-31-110 reserved.
25-31-111. What provisions of code applicable to justices' courts.
25-31-112. Fees.
25-31-113. When fees payable.
25-31-114. Repealed.
25-31-115. Deposit of money in lieu of undertaking.
25-31-116. Repealed.
25-31-117 and 25-31-118 reserved.
25-31-119. Interpleader actions.

Part 2 — Venue

25-31-201 through 25-31-204. Repealed.
25-31-205. Actions for forcible entry or unlawful detainer.

Part 3 — Change of Venue
(Repealed. Sec. 63, Ch. 16, L. 1991)

Part 4 — Commencement of Action—Summons

25-31-401. Repealed.
25-31-402. Security for costs.
25-31-403. Repealed.
25-31-404. Repealed.
25-31-405. Designating unknown person as defendant.
25-31-406. Time for answer or appearance.
25-31-407. Requirements for summons served out of county.
25-31-408. Repealed.
25-31-409. Alias summons.

Part 5 — Pleadings

25-31-501 through 25-31-507. Repealed.
25-31-508 through 25-31-510 reserved.
25-31-511. Repealed.
25-31-512. Admission of genuineness of signatures.
25-31-513 through 25-31-520 reserved.
25-31-521. Repealed.
25-31-522. Repealed.
25-31-523. Variance.

Part 6 — Parties

25-31-601. Who may act as attorney.
25-31-602. When guardian necessary — how appointed.

Part 7 — Time of Trial—Postponements

25-31-701. Repealed.
25-31-702. Trial to be timely.
25-31-703. Postponement by motion of court.
25-31-704. Postponement by consent of parties.
25-31-705. Postponement upon application of a party — proof required.
25-31-706. No postponement when expected evidence admitted.
25-31-707. Procedure when defendant under arrest.

25-31-708. Deposition of witnesses upon postponement.
25-31-709. Time limit on adjournment — undertaking.

Part 8 — Trial

25-31-801. Issue defined, types of issues.
25-31-802. When issues of fact arise.
25-31-803. By whom issues tried.
25-31-804. Repealed.
25-31-805 through 25-31-810 reserved.
25-31-811. Repealed.
25-31-812. Repealed.

Part 9 — Judgment

25-31-901 through 25-31-905. Repealed.
25-31-906. Judgment when amount found due exceeds the jurisdiction of the court.
25-31-907. Judgment when counterclaim has been established.
25-31-908. Judgment when defendant subject to arrest.
25-31-909 and 25-31-910 reserved.
25-31-911. Repealed.
25-31-912. Repealed.
25-31-913. Repealed.
25-31-914. Lien on real property.
25-31-915. Repealed.

Part 10 — Costs

25-31-1001. Repealed.
25-31-1002. How costs taxed.
25-31-1003. Repealed.
25-31-1004. Repealed.
25-31-1005. Repealed.

Part 11 — Execution of Judgment

25-31-1101. Repealed.
25-31-1102. Repealed.
25-31-1103. Repealed.
25-31-1104. Manner of execution.
25-31-1105. Repealed.
25-31-1106. Discharge of imprisoned judgment debtor.
25-31-1107 through 25-31-1110 reserved.
25-31-1111. Collection of judgment against county or county officer.

Chapter Cross-References

Justices of the Peace, Art. VII, sec. 5, 7, Mont. Const.

Courts and judicial officers generally, Title 3, ch. 1.

Appellate jurisdiction of District Court, 3-5-303.

Justices' Courts, Title 3, ch. 10.

Civil actions — form and commencement, Title 25, ch. 1, part 1.

Appeal to District Court from Justices' and City Courts, Title 25, ch. 33.

Small claims procedure — Justices' Court, Title 25, ch. 35.

Arrest in civil actions in Justice's Court, Title 27, ch. 16, part 10.

Attachment in Justice's Court, Title 27, ch. 18, part 15.

Criminal Procedure in Justices' Courts, Title 46, ch. 17, parts 1 through 3.

Part 1

General Provisions

25-31-101. Issues which cannot be presented in justice's court. (1) The parties to an action in a justice's court cannot give evidence upon any question which involves the title or possession of real property or the legality of any tax, impost, assessment, toll, or municipal fine, nor can any issue presenting such question be tried by such court; provided that, in cases of forcible entry and unlawful detainer of which justices' courts have jurisdiction, any evidence otherwise competent may be given, and any question properly involved therein may be determined.

(2) A justice's court may not hear evidence on or try any issue involving the state's liability to make a payment of money, regardless of the basis of the claim against the state.

History: En. Sec. 593, Bannack Stat.; re-en. Sec. 699, p. 176, Cod. Stat. 1871; re-en. Sec. 759, 1st Div. Rev. Stat. 1879; re-en. Sec. 779, 1st Div. Comp. Stat. 1887; en. Sec. 1486, C. Civ. Proc. 1895; re-en. Sec. 6992, Rev. C. 1907; re-en. Sec. 9625, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 838; re-en. Sec. 9625, R.C.M. 1935; R.C.M. 1947, 93-6607(part); amd. Sec. 4, Ch. 409, L. 1979.

Cross-References

Jurisdiction of Justices' Courts, Title 3, ch. 10, part 3.

25-31-102. Transfer to district court — dismissal. (1) If it appears from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve the question of title or possession to real property or the legality of any tax, impost, assessment, toll, or municipal fine, the justice must suspend all further proceedings in the action and certify the pleadings and, if any of the pleadings are oral, a transcript of the same from his docket to the clerk of the district court of the county. From the time of the certification of such pleadings or transcript to the clerk, the district court shall have over the action the same jurisdiction as if it had been commenced therein. When the action is certified to the district court, upon the answer of the defendant, he must file an undertaking, to be approved by the justice, to the effect that he will pay all costs that may be awarded against him on the trial in the district court.

(2) If it appears at any point in the proceedings in a justice's court that the determination of the action will involve the question of the state's liability to make a payment of money, the justice shall sever that issue and dismiss the action as to it. If the issue is not severable, the justice shall dismiss the entire action.

History: En. Sec. 593, Bannack Stat.; re-en. Sec. 699, p. 176, Cod. Stat. 1871; re-en. Sec. 759, 1st Div. Rev. Stat. 1879; re-en. Sec. 779, 1st Div. Comp. Stat. 1887; en. Sec. 1486, C. Civ. Proc. 1895; re-en. Sec. 6992, Rev. C. 1907; re-en. Sec. 9625, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 838; re-en. Sec. 9625, R.C.M. 1935; R.C.M. 1947, 93-6607(part); amd. Sec. 5, Ch. 409, L. 1979; amd. Sec. 112, Ch. 575, L. 1981.

Cross-References

Civil jurisdiction of Justices' Courts, 3-10-301.

25-31-103 through 25-31-110 reserved.

25-31-111. What provisions of code applicable to justices' courts. Because justices' courts are courts of peculiar and limited jurisdiction, only those provisions of this code which are, in their nature, applicable to the organization, powers, and course of proceedings in justices' courts or which have been made applicable by special provisions in this chapter and Titles 3 and 27 are applicable to justices' courts and the proceedings therein.

History: En. Sec. 1686, C. Civ. Proc. 1895; re-en. Sec. 7084, Rev. C. 1907; re-en. Sec. 9717, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 925; re-en. Sec. 9717, R.C.M. 1935; amd. Sec. 52, Ch. 344, L. 1977; R.C.M. 1947, 93-7707; amd. Sec. 113, Ch. 575, L. 1981.

Cross-References

What provisions of code applicable to Justices' Courts, 3-10-111.

Claim and delivery in Justice's Court, 27-17-102.

25-31-112. Fees. The following is the schedule of fees which, except as provided in 25-35-605, shall be paid in every civil action in a justice's court:

(1) $25 when complaint is filed, to be paid by the plaintiff;

(2) $10 when the defendant appears, to be paid by the defendant;

(3) $10 to be paid by the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the $25 for the filing of the complaint shall be made for any services, including issuing and return of execution.

(4) $10 for all services in an action where judgment is rendered by confession;

(5) $10 for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate.

History: En. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 1, Ch. 55, L. 1921; re-en. Sec. 4924, R.C.M. 1921; re-en. Sec. 4924, R.C.M. 1935; amd. Sec. 1, Ch. 184, L. 1963; amd. Sec. 3, Ch. 420, L. 1975; amd. Sec. 1, Ch. 154, L. 1977; R.C.M. 1947, 25-301; amd. Sec. 28, Ch. 586, L. 1981; amd. Sec. 2, Ch. 492, L. 1983; amd. Sec. 2, Ch. 569, L. 1985; amd. Sec. 1, Ch. 26, L. 1989.

Cross-References

Fines, penalties, forfeitures, fees, and costs in Justices' Courts, Title 3, ch. 10, part 6.

25-31-113. When fees payable. All fees must be paid in advance, and no costs shall be included in any judgment until they have been paid. However, nothing herein contained shall restrict or prevent the bringing of suits in forma pauperis as provided by law.

History: En. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 2, Ch. 55, L. 1921; re-en. Sec. 4925, R.C.M. 1921; re-en. Sec. 4925, R.C.M. 1935; R.C.M. 1947, 25-302.

Cross-References

Fines, penalties, forfeitures, fees, and costs in Justices' Courts, Title 3, ch. 10, part 6.

Poor persons not required to prepay fees, 25-10-404.

Small claims procedure — fees, 25-35-608.

25-31-114. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1691, C. Civ. Proc. 1895; re-en. Sec. 7089, Rev. C. 1907; re-en. Sec. 9722, R.C.M. 1921; re-en. Sec. 9722, R.C.M. 1935; amd. Sec. 1, Ch. 167, L. 1967; R.C.M. 1947, 93-7712.

25-31-115. Deposit of money in lieu of undertaking. In civil cases arising in justices' courts wherein an undertaking is required by this chapter, the plaintiff or defendant may deposit with said justice a sum of money equal to the amount required by said undertaking, which said sum of money shall be taken as security in place of said undertaking.

History: En. Sec. 1687, C. Civ. Proc. 1895; re-en. Sec. 7085, Rev. C. 1907; re-en. Sec. 9718, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 926; re-en. Sec. 9718, R.C.M. 1935; R.C.M. 1947, 93-7708; amd. Sec. 114, Ch. 575, L. 1981.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

25-31-116. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 611, p. 164, Bannack Stat.; re-en. Sec. 717, p. 180, Cod. Stat. 1871; re-en. Sec. 777, 1st Div. Rev. Stat. 1879; re-en. Sec. 797, 1st Div. Comp. Stat. 1887; amd. Sec. 1628, C. Civ. Proc. 1895; re-en. Sec. 7054, Rev. C. 1907; re-en. Sec. 9687, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 895; re-en. Sec. 9687, R.C.M. 1935; R.C.M. 1947, 93-7309.

25-31-117 and 25-31-118 reserved.

25-31-119. Interpleader actions. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the justice's court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Justice's Court of the State of Montana in and for the County of ...., before ...., Justice of the Peace.

. . . . ,
Plaintiff
vs.
. . . . , INTERPLEADER AFFIDAVIT
Defendant
and
. . . . ,
Defendant

)
State of Montana) ss
)

................, being duly sworn, deposes and says: That................, a defendant, resides at .... That................, a defendant, resides at .... That the plaintiff has custody or possession of money in the amount of $....., held pursuant to the following:

. . . .
. . . .
. . . .
. . . .

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown.

. . . .
Affiant

Subscribed and sworn to before me this .... day of ...., 19....

. . . .
Justice of the Peace

. . . .
Clerk

ORDER

The State of Montana to the within named defendants, greeting:

You are hereby directed to appear and answer the within and foregoing claim at my office in .... (name, building, or residence), in ...., County of ...., State of Montana, on the .... day of ...., 19...., at the hour of ......(AM)(PM); and to have with you then and there, all books, papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition thereof; and, in addition, for costs of the action.

Dated this .... day of ...., 19.....

. . . .
Justice of the Peace

. . . .
Clerk

History: En. Sec. 2, Ch. 326, L. 1991.

Part 2
Venue

25-31-201 through 25-31-204. Repealed. Sec. 63, Ch. 16, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

25-31-201. En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 832; re-en. Sec. 9619, R.C.M. 1935; amd. Sec. 15, Ch. 491, L. 1973; R.C.M. 1947, 93-6601(part).

25-31-202. En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 832; re-en. Sec. 9619, R.C.M. 1935; amd. Sec. 15, Ch. 491, L. 1973; R.C.M. 1947, 93-6601(part).

25-31-203. En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 832; re-en. Sec. 9619, R.C.M. 1935; amd. Sec. 15, Ch. 491, L. 1973; R.C.M. 1947, 93-6601(part).

25-31-204. En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 832; re-en. Sec. 9619, R.C.M. 1935; amd. Sec. 15, Ch. 491, L. 1973; R.C.M. 1947, 93-6601(part).

25-31-205. Actions for forcible entry or unlawful detainer. All actions for the recovery of the possession of real property must be commenced in the county in which the real property, or any part thereof, affected by such action or actions is situated.

History: En. Sec. 43, C. Civ. Proc. 1895; re-en. Sec. 6277, Rev. C. 1907; re-en. Sec. 8831, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 78; R.C.M. 1947, 93-320(part).

Cross-References

Forcible entry and unlawful detainer, Title 70, ch. 27.

Part 3

Change of Venue (Repealed. Sec. 63, Ch. 16, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

25-31-301. En. Sec. 594, p. 160, Bannack Stat.; re-en. Sec. 700, p. 176, Cod. Stat. 1871; re-en. Sec. 760, 1st Div. Rev. Stat. 1879; re-en. Sec. 780, 1st Div. Comp. Stat. 1887; en. Sec. 1481, C. Civ. Proc. 1895; re-en. Sec. 6987, Rev. C. 1907; re-en. Sec. 9620, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 833; re-en. Sec. 9620, R.C.M. 1935; amd. Sec. 16, Ch. 491, L. 1973; former (2) superseded by Sup. Ct. Ord., 34 St. Rep. 26, Dec. 29, 1976; R.C.M. 1947, 93-6602; amd. Sec. 115, Ch. 575, L. 1981.

25-31-302. En. Sec. 1482, C. Civ. Proc. 1895; re-en. Sec. 6988, Rev. C. 1907; amd. Sec. 1, Ch. 37, L. 1921; re-en. Sec. 9621, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 834; re-en. Sec. 9621, R.C.M. 1935; R.C.M. 1947, 93-6603(part).

25-31-303. En. Sec. 1482, C. Civ. Proc. 1895; re-en. Sec. 6988, Rev. C. 1907; amd. Sec. 1, Ch. 37, L. 1921; re-en. Sec. 9621, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 834; re-en. Sec. 9621, R.C.M. 1935; R.C.M. 1947, 93-6603(part).

25-31-304. En. Sec. 605, p. 163, Bannack Stat.; re-en. Sec. 711, p. 179, Cod. Stat. 1871; re-en. Sec. 771, 1st Div. Rev. Stat. 1879; re-en. Sec. 791, 1st Div. Comp. Stat. 1887; amd. Sec. 1621, C. Civ. Proc. 1895; re-en. Sec. 7047, Rev. C. 1907; re-en. Sec. 9680, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 890; re-en. Sec. 9680, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1937; amd. Sec. 19, Ch. 491, L. 1973; R.C.M. 1947, 93-7302(part).

25-31-305. En. Sec. 1483, C. Civ. Proc. 1895; re-en. Sec. 6989, Rev. C. 1907; re-en. Sec. 9622, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 835; re-en. Sec. 9622, R.C.M. 1935; R.C.M. 1947, 93-6604.

25-31-306. Ap. p. Sec. 1484, C. Civ. Proc. 1895; re-en. Sec. 6990, Rev. C. 1907; re-en. Sec. 9623, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 836; re-en. Sec. 9623, R.C.M. 1935; Sec. 93-6605, R.C.M. 1947; Ap. p. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; Sec. 93-2908, R.C.M. 1947; R.C.M. 1947, 93-2908(part), 93-6605(part).

25-31-307. Ap. p. Sec. 1485, C. Civ. Proc. 1895; re-en. Sec. 6991, Rev. C. 1907; re-en. Sec. 9624, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 837; re-en. Sec. 9624, R.C.M. 1935; Sec. 93-6606, R.C.M. 1947; Ap. p. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; Sec. 93-2908, R.C.M. 1947; R.C.M. 1947, 93-2908(part), 93-6606.

25-31-308. En. Sec. 1484, C. Civ. Proc. 1895; re-en. Sec. 6990, Rev. C. 1907; re-en. Sec. 9623, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 836; re-en. Sec. 9623, R.C.M. 1935; R.C.M. 1947, 93-6605(2); amd. Sec. 116, Ch. 575, L. 1981.

Part 4

Commencement of Action — Summons

25-31-401. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 554, p. 151, Bannack Stat.; re-en. Sec. 660, p. 168, Cod. Stat. 1871; re-en. Sec. 720, 1st Div. Rev. Stat. 1879; re-en. Sec. 740, 1st Div. Comp. Stat. 1887; en. Sec. 1500, C. Civ. Proc. 1895; re-en. Sec. 6993, Rev. C. 1907; re-en. Sec. 9626, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 839; re-en. Sec. 9626, R.C.M. 1935; R.C.M. 1947, 93-6701.

25-31-402. Security for costs. A justice may, in all cases, require a deposit of money or an undertaking as security for costs of court before issuing a summons.

History: (1)En. Sec. 1501, C. Civ. Proc. 1895; re-en. Sec. 6994, Rev. C. 1907; re-en. Sec. 9627, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 840; re-en. Sec. 9627, R.C.M. 1935; Sec. 93-6702, R.C.M. 1947; (2)En. Sec. 645, p. 171, Bannack Stat.; re-en. Sec. 750, p. 187, Cod. Stat. 1871; re-en. Sec. 810, 1st Div. Rev. Stat. 1879; re-en. Sec. 830, 1st Div. Comp. Stat. 1887; re-en. Sec. 1684, C. Civ. Proc. 1895; re-en. Sec. 7082, Rev. C. 1907; re-en. Sec. 9715,

R.C.M. 1921; Cal. C. Civ. Proc. Sec. 923; re-en. Sec. 9715, R.C.M. 1935; Sec. 93-7705, R.C.M. 1947; R.C.M. 1947, 93-6702, 93-7705; amd. Sec. 25, Ch. 16, L. 1991.

Cross-References

Time of service to be recorded on docket, 3-10-501.

Undertakings for security, Title 25, ch. 1, part 4.

Deposit of money in lieu of undertaking, 25-31-115.

25-31-403. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1502, C. Civ. Proc. 1895; re-en. Sec. 6995, Rev. C. 1907; re-en. Sec. 9628, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 841; re-en. Sec. 9628, R.C.M. 1935; R.C.M. 1947, 93-6703.

25-31-404. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 556, p. 152, Bannack Stat.; re-en. Sec. 662, p. 169, Cod. Stat. 1871; re-en. Sec. 722, 1st Div. Rev. Stat. 1879; re-en. Sec. 742, 1st Div. Comp. Stat. 1887; En. Sec. 1505, C. Civ. Proc. 1895; re-en. Sec. 6998, Rev. C. 1907; re-en. Sec. 9631, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 844; re-en. Sec. 9631, R.C.M. 1935; amd. Sec. 1, Ch. 91, L. 1939; amd. Sec. 17, Ch. 491, L. 1973; R.C.M. 1947, 93-6706.

25-31-405. Designating unknown person as defendant. Where the plaintiff is ignorant of the name or part of the name of a defendant, that defendant may be designated in the summons and in any other process or proceeding in the action by a fictitious name or by so much of his name as is known, adding a description identifying the person intended. The person so designated must thereupon be regarded as a defendant in the action and as sufficiently described therein for all purposes. When his name or the remainder of his name is known or becomes known, the justice before whom the action is pending must amend the proceedings already taken by the insertion of the true or full name in place of the fictitious name or part of a name, and all subsequent proceedings must be taken under the name so inserted.

History: En. Sec. 1692, C. Civ. Proc. 1895; re-en. Sec. 7090, Rev. C. 1907; re-en. Sec. 9723, R.C.M. 1921; re-en. Sec. 9723, R.C.M. 1935; R.C.M. 1947, 93-7713.

25-31-406. Time for answer or appearance. The time specified in the summons for the appearance of the defendant must be as follows:

(1) if an order of arrest is endorsed upon the summons, immediately;

(2) in all other cases, the summons must provide that the defendant shall answer in writing, file the answer, and serve a copy upon the plaintiff or his attorney within 20 days after service of the summons, exclusive of the day of service, and in case of his failure to appear or answer, judgment will be taken against him by default for the relief demanded in the complaint.

History: En. Sec. 557, p. 152, Bannack Stat.; re-en. Sec. 663, p. 169, Cod. Stat. 1871; re-en. Sec. 723, 1st Div. Rev. Stat. 1879; re-en. Sec. 743, 1st Div. Comp. Stat. 1887; amd. Sec. 1506, C. Civ. Proc. 1895; re-en. Sec. 6999, Rev. C. 1907; re-en. Sec. 9632, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 845; re-en. Sec. 9632, R.C.M. 1935; amd. Sec. 3, Ch. 34, L. 1937; amd. Sec. 1, Ch. 196, L. 1939; R.C.M. 1947, 93-6707; amd. Sec. 26, Ch. 16, L. 1991.

Cross-References

Arrest in civil actions in Justice's Court, Title 27, ch. 16, part 10.

25-31-407. Requirements for summons served out of county. When a summons issued by a justice of the peace or city court judge is to be served out of the county in which it was issued, the summons must have attached to it a certificate, under seal by the county clerk of the county in which it was issued, to the effect that the person issuing the summons was an acting justice of the peace or city court judge at the date of the summons.

History: (1)En. Sec. 1509, C. Civ. Proc. 1895; re-en. Sec. 7002, Rev. C. 1907; re-en. Sec. 9635, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 848; re-en. Sec. 9635, R.C.M. 1935; Sec. 93-6710, R.C.M. 1947; (2)En. Sec. 1510, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 61, L. 1903; re-en. Sec. 7003, Rev. C. 1907; re-en. Sec. 9636, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 849; re-en. Sec. 9636, R.C.M. 1935; amd. Sec. 1, Ch. 110, L. 1967; amd. Sec. 57, Ch. 535, L. 1975; Sec. 93-6711, R.C.M. 1947; R.C.M. 1947, 93-6710, 93-6711(part); amd. Sec. 27, Ch. 16, L. 1991; amd. Sec. 1, Ch. 343, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 343 in two places, after "justice of the peace", inserted "or city court judge".

Cross-References

Rules for determining residency, 1-1-215.

Territorial extent of civil jurisdiction, 3-10-304.

25-31-408. Repealed. Sec. 63, Ch. 16, L. 1991.

History: (1), (2)En. Sec. 1510, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 61, L. 1903; re-en. Sec. 7003, Rev. C. 1907; re-en. Sec. 9636, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 849; re-en. Sec. 9636, R.C.M. 1935; amd. Sec. 1, Ch. 110, L. 1967; amd. Sec. 57, Ch. 535, L. 1975; Sec. 93-6711, R.C.M. 1947; (3)En. by Code Commissioner, 1979; R.C.M. 1947, 93-6711(part); amd. Sec. 117, Ch. 575, L. 1981.

25-31-409. Alias summons. If the summons is returned without being served upon any or all of the defendants, the justice, upon the demand of the plaintiff, may issue an alias summons in the same form as the original. The justice may, within a year from the date of filing the complaint, issue as many alias summonses as may be demanded by the plaintiff.

History: Ap. p. Sec. 1507, C. Civ. Proc. 1895; re-en. Sec. 7000, Rev. C. 1907; re-en. Sec. 9633, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 846; re-en. Sec. 9633, R.C.M. 1935; amd. Sec. 4, Ch. 34, L. 1937; Sec. 93-6708, R.C.M. 1947; Ap. p. Sec. 1508, C. Civ. Proc. 1895; re-en. Sec. 7001, Rev. C. 1907; re-en. Sec. 9634, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 847; re-en. Sec. 9634, R.C.M. 1935; Sec. 93-6709, R.C.M. 1947; R.C.M. 1947, 93-6708, 93-6709.

Part 5
Pleadings

Part Cross-References

Pleadings to be recorded on docket, 3-10-501.

25-31-501 through 25-31-507. Repealed. Sec. 63, Ch. 16, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

25-31-501. En. Sec. 1520, C. Civ. Proc. 1895; re-en. Sec. 7005, Rev. C. 1907; re-en. Sec. 9638, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 851; re-en. Sec. 9638, R.C.M. 1935; R.C.M. 1947, 93-6801; amd. Sec. 118, Ch. 575, L. 1981.

25-31-502. En. Sec. 1, Ch. 168, L. 1967; R.C.M. 1947, 93-6802.1.

25-31-503. En. Sec. 2, Ch. 168, L. 1967; amd. Sec. 16, Ch. 420, L. 1975; R.C.M. 1947, 93-6802.2.

25-31-504. En. Sec. 1522, C. Civ. Proc. 1895; re-en. Sec. 7007, Rev. C. 1907; re-en. Sec. 9640, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 853; re-en. Sec. 9640, R.C.M. 1935; R.C.M. 1947, 93-6803.

25-31-505. En. Sec. 1524, C. Civ. Proc. 1895; re-en. Sec. 7009, Rev. C. 1907; re-en. Sec. 9642, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 855; re-en. Sec. 9642, R.C.M. 1935; R.C.M. 1947, 93-6805.

25-31-506. En. Sec. 1525, C. Civ. Proc. 1895; re-en. Sec. 7010, Rev. C. 1907; re-en. Sec. 9643, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 856; re-en. Sec. 9643, R.C.M. 1935; R.C.M. 1947, 93-6806; amd. Sec. 2, Ch. 348, L. 1981.

25-31-507. En. Sec. 1528, C. Civ. Proc. 1895; re-en. Sec. 7013, Rev. C. 1907; re-en. Sec. 9646, R.C.M. 1921; re-en. Sec. 9646, R.C.M. 1935; R.C.M. 1947, 93-6809.

25-31-508 through 25-31-510 reserved.

25-31-511. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 588, p. 158, Bannack Stat.; re-en. Sec. 694, p. 175, Cod. Stat. 1871; re-en. Sec. 754, 1st Div. Rev. Stat. 1879; re-en. Sec. 774, 1st Div. Comp. Stat. 1887; en. Sec. 1531, C. Civ. Proc. 1895; re-en. Sec. 7016, Rev. C. 1907; re-en. Sec. 9649, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 886; re-en. Sec. 9649, R.C.M. 1935; R.C.M. 1947, 93-6812.

25-31-512. Admission of genuineness of signatures. If the plaintiff annex to his complaint or file with the justice at the time of issuing the summons a copy of the promissory note, bill of exchange, other obligation for the payment of money, or other instrument upon which the action is brought, the defendant shall be deemed to admit the genuineness of all the signatures thereto unless he specifically deny the same in his answer under oath. In case of a counterclaim, the same rule applies to the plaintiff.

History: En. Sec. 589, p. 159, Bannack Stat.; re-en. Sec. 695, p. 175, Cod. Stat. 1871; re-en. Sec. 755, 1st Div. Rev. Stat. 1879; re-en. Sec. 775, 1st Div. Comp. Stat. 1887; amd. Sec. 1532, C. Civ. Proc. 1895; re-en. Sec. 7017, Rev. C. 1907; re-en. Sec. 9650, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 887; re-en. Sec. 9650, R.C.M. 1935; R.C.M. 1947, 93-6813.

25-31-513 through 25-31-520 reserved.

25-31-521. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1529, C. Civ. Proc. 1895; re-en. Sec. 7014, Rev. C. 1907; re-en. Sec. 9647, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 859; re-en. Sec. 9647, R.C.M. 1935; R.C.M. 1947, 93-6810(part); amd. Sec. 121, Ch. 575, L. 1981.

25-31-522. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1530, C. Civ. Proc. 1895; re-en. Sec. 7015, Rev. C. 1907; re-en. Sec. 9648, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 860; re-en. Sec. 9648, R.C.M. 1935; amd. Sec. 15, Ch. 420, L. 1975; R.C.M. 1947, 93-6811.

25-31-523. Variance. A variance between the proof on the trial and the allegations in pleading shall be disregarded as immaterial unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

History: En. Sec. 591, p. 159, Bannack Stat.; re-en. Sec. 697, p. 176, Cod. Stat. 1871; re-en. Sec. 757, 1st Div. Rev. Stat. 1879; re-en. Sec. 777, 1st Div. Comp. Stat. 1887; re-en. Sec. 1533, C. Civ. Proc. 1895; re-en. Sec. 7018, Rev. C. 1907; re-en. Sec. 9651, R.C.M. 1921; re-en. Sec. 9651, R.C.M. 1935; R.C.M. 1947, 93-6814.

Part 6

Parties

25-31-601. Who may act as attorney. Parties in justice's court may appear and act in person or by attorney; and any person, except the constable by whom the summons or jury process was served, may act as attorney.

History: En. Sec. 551, p. 151, Bannack Stat.; re-en. Sec. 657, p. 167, Cod. Stat. 1871; re-en. Sec. 717, 1st Div. Rev. Stat. 1879; re-en. Sec. 737, 1st Div. comp. Stat. 1887; amd. Sec. 1503, C. Civ. Proc. 1895; re-en. Sec. 6996, Rev. C. 1907; re-en. Sec. 9629, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 842; re-en. Sec. 9629, R.C.M. 1935; R.C.M. 1947, 93-6704.

Cross-References

Restrictions on practice of law by certain officers, 7-4-2210.

Parties in small claims court proceedings, 25-35-505.

25-31-602. When guardian necessary — how appointed. When a minor or seriously mentally ill or incompetent person is a party, he must appear either by his general guardian, if he has one, or by a guardian ad litem appointed by the justice. When a guardian ad litem is appointed by the justice, he must be appointed as follows:

(1) If the minor or seriously mentally ill or incompetent person is a plaintiff, the appointment must be made before the summons is issued:

(a) in the case of a minor who is 14 or more years old, upon the application of the minor;

(b) in the case of a minor who is less than 14 years old or a seriously mentally ill or incompetent person, upon the application of a relative or friend;

(c) in any case described in subsection (1)(a) or (1)(b) in which no application is made, upon the justice's own motion.

(2) If the minor or seriously mentally ill or incompetent person is a defendant, the appointment must be made at the time the summons is returned or before the answer:

(a) in the case of a minor who is 14 or more years old and who applies before the summons is returned or at the time of the return, upon the application of the minor;

(b) in the case of a minor who is less than 14 years old or a seriously mentally ill or incompetent person, upon the application of a relative or friend or any other party to the action;

(c) in any case described in subsection (2)(a) or (2)(b) in which no application is made, upon the justice's own motion.

History: **En. Sec. 555, p. 151, Bannack Stat.; re-en. Sec. 661, p. 169, Cod. Stat. 1871; re-en. Sec. 721, 1st Div. Rev. Stat. 1879; re-en. Sec. 741, 1st Div. Comp. Stat. 1887; en. Sec. 1504, C. Civ. Proc. 1895; re-en. Sec. 6997, Rev. C. 1907; re-en. Sec. 9630, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 843; re-en. Sec. 9630, R.C.M. 1935; R.C.M. 1947, 93-6705; amd. Sec. 122, Ch. 575, L. 1981.**

Cross-References

Infants or incompetent persons, Rule 17(c), M.R.Civ.P. (see Title 25, ch. 20).

Substitution of parties — incompetency, Rule 25(b), M.R.Civ.P. (see Title 25, ch. 20).

Right of minor to bring civil action or other proceedings, 27-1-511.

When parental authority ceases, 40-6-234.

Enforcement of minor's rights, 41-1-202.

Part 7

Time of Trial — Postponements

25-31-701. Repealed. Sec. 63, Ch. 16, L. 1991.

History: **En. Sec. 1511, C. Civ. Proc. 1895; re-en. Sec. 7004, Rev. C. 1907; re-en. Sec. 9637, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 850; re-en. Sec. 9637, R.C.M. 1935; amd. Sec. 5, Ch. 34, L. 1937; R.C.M. 1947, 93-6712.**

25-31-702. Trial to be timely. Unless postponed as provided in this part or transferred to another court, the trial of the action may commence at the time set by the court as specified in the notice mentioned in Rule 20, Montana Justice and City Court Rules of Civil Procedure, and after the trial has commenced, there may be no adjournment for more than 24 hours at any one time until all the issues are disposed of.

History: **En. Sec. 1590, C. Civ. Proc. 1895; re-en. Sec. 7033, Rev. C. 1907; re-en. Sec. 9666, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 873; re-en. Sec. 9666, R.C.M. 1935; R.C.M. 1947, 93-7101; amd. Sec. 1, Ch. 125, L. 1979; amd. Sec. 28, Ch. 16, L. 1991.**

25-31-703. Postponement by motion of court. The court may, of its own motion, postpone the trial for not exceeding 4 months for good cause.

History: **En. Sec. 1591, C. Civ. Proc. 1895; re-en. Sec. 7034, Rev. C. 1907; re-en. Sec. 9667, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 874; re-en. Sec. 9667, R.C.M. 1935; R.C.M. 1947, 93-7102; amd. Sec. 3, Ch. 569, L. 1985.**

25-31-704. Postponement by consent of parties. The court may, by the consent of the parties given in writing or in open court, postpone the trial to a time agreed upon by the parties.

History: **En. Sec. 1592, C. Civ. Proc. 1895; re-en. Sec. 7035, Rev. C. 1907; re-en. Sec. 9668, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 875; re-en. Sec. 9668, R.C.M. 1935; R.C.M. 1947, 93-7103.**

25-31-705. Postponement upon application of a party — proof required. The trial may be postponed upon the application of either party for a period not exceeding 4 months. The party making the application must prove, by his own oath or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial and must show in what respect the testimony expected is material and that he has used due diligence to procure it and has been unable to do so.

History: **En. Sec. 596, p. 161, Bannack Stat.; re-en. Sec. 702, p. 177, Cod. Stat. 1871; re-en. Sec. 762, 1st Div. Rev. Stat. 1879; re-en. Sec. 782, 1st Div. Comp. Stat. 1887; en. Sec. 1593, C. Civ. Proc. 1895; re-en. Sec. 7036, Rev. C. 1907; re-en. Sec. 9669, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 876; re-en. Sec. 9669, R.C.M. 1935; R.C.M. 1947, 93-7104(part).**

25-31-706. No postponement when expected evidence admitted. The court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given and that it be considered as actually given on the trial or offered and overruled as improper, the trial must not be postponed.

History: **En. Sec. 596, p. 161, Bannack Stat.; re-en. Sec. 702, p. 177, Cod. Stat. 1871; re-en. Sec. 762, 1st Div. Rev. Stat. 1879; re-en. Sec. 782, 1st Div. Comp. Stat. 1887; en. Sec. 1593, C. Civ. Proc. 1895; re-en. Sec. 7036, Rev. C. 1907; re-en. Sec. 9669, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 876; re-en. Sec. 9669, R.C.M. 1935; R.C.M. 1947, 93-7104(part).**

25-31-707. Procedure when defendant under arrest. (1) If the application is on the part of the plaintiff and the defendant is under arrest, a postponement for more than 3 hours discharges the defendant from custody; but the action may proceed, notwithstanding, and the defendant is subject to arrest on execution in the same manner as if he had not been discharged.

(2) If the application is on the part of a defendant under arrest, before it can be granted he must execute an undertaking, with two or more sufficient sureties to be approved by and in a sum to be fixed by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action and to such as may be issued to enforce the judgment therein, or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action, not exceeding the amount specified in the undertaking. On filing the undertaking specified in this subsection, the justice may order the defendant discharged from custody.

History: **En. Sec. 596, p. 161, Bannack Stat.; re-en. Sec. 702, p. 177, Cod. Stat. 1871; re-en. Sec. 762, 1st Div. Rev. Stat. 1879; re-en. Sec. 782, 1st Div. Comp. Stat. 1887; en. Sec. 1593, C. Civ. Proc. 1895; re-en. Sec. 7036, Rev. C. 1907; re-en. Sec. 9669, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 876; re-en. Sec. 9669, R.C.M. 1935; R.C.M. 1947, 93-7104(2), (3).**

Cross-References

Defendant to be taken before Justice of the Peace immediately, 27-16-1003.

25-31-708. Deposition of witnesses upon postponement. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance may be then taken by deposition before the justice and that the testimony so taken may be read on trial with the same effect and subject to the objections as if the witness were produced.

History: En. Sec. 596, p. 161, Bannack Stat.; re-en. Sec. 702, p. 177, Cod. Stat. 1871; re-en. Sec. 762, 1st Div. Rev. Stat. 1879; re-en. Sec. 782, 1st Div. Comp. Stat. 1887; en. Sec. 1593, C. Civ. Proc. 1895; re-en. Sec. 7036, Rev. C. 1907; re-en. Sec. 9669, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 876; re-en. Sec. 9669, R.C.M. 1935; R.C.M. 1947, 93-7104(part).

25-31-709. Time limit on adjournment — undertaking. No adjournment may be granted upon the application of either party for a period longer than 10 days unless the opposite party consents or the party applying files an undertaking, in an amount fixed by the justice, with two sureties to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

History: En. Sec. 598, p. 162, Bannack Stat.; re-en. Sec. 704, p. 178, Cod. Stat. 1871; re-en. Sec. 764, 1st Div. Rev. Stat. 1879; re-en. Sec. 784, 1st Div. Comp. Stat. 1887; amd. Sec. 1594, C. Civ. Proc. 1895; re-en. Sec. 7037, Rev. C. 1907; re-en. Sec. 9670, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 877; re-en. Sec. 9670, R.C.M. 1935; R.C.M. 1947, 93-7105; amd. Sec. 123, Ch. 575, L. 1981.

Part 8
Trial

25-31-801. Issue defined, types of issues. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

(1) of law; and

(2) of fact.

History: En. Sec. 1600, C. Civ. Proc. 1895; re-en. Sec. 7038, Rev. C. 1907; re-en. Sec. 9671, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 878; re-en. Sec. 9671, R.CM. 1935; R.C.M. 1947, 93-7201.

25-31-802. When issues of fact arise. An issue of fact arises:

(1) whenever a material allegation in the complaint is controverted by the answer; and

(2) whenever the answer contains new matter which raises questions of fact and not merely an issue of law.

History: En. Sec. 1602, C. Civ. Proc. 1895; re-en. Sec. 7040, Rev. C. 1907; re-en. Sec. 9673, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 880; re-en. Sec. 9673, R.C.M. 1935; R.C.M. 1947, 93-7203; amd. Sec. 124, Ch. 575, L. 1981.

25-31-803. By whom issues tried. (1) An issue of law must be tried by the court.

(2) An issue of fact must be tried by a jury unless a jury is waived, in which case it must be tried by the court.

History: En. Secs. 1603, 1604, C. Civ. Proc. 1895; re-en. Secs. 7041, 7042, Rev. C. 1907; re-en. Secs. 9674, 9675, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 881, 882; re-en. Secs. 9674, 9675, R.C.M. 1935; R.C.M. 1947, 93-7204, 93-7205.

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Number of jurors in Justices' Courts, 3-15-107.

25-31-804. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1605, C. Civ. Proc. 1895; re-en. Sec. 7043, Rev. C. 1907; re-en. Sec. 9676, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 883; re-en. Sec. 9676, R.C.M. 1935; R.C.M. 1947, 93-7206.

25-31-805 through 25-31-810 reserved.

25-31-811. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 600, p. 162, Bannack Stat.; re-en. Sec. 706, p. 178, Cod. Stat. 1871; re-en. Sec. 766, 1st Div. Rev. Stat. 1879; re-en. Sec. 786, 1st Div. Comp. Stat. 1887; amd. Sec. 1606, C. Civ. Proc. 1895; re-en. Sec. 7044, Rev. C. 1907; re-en. Sec. 9677, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 884; re-en. Sec. 9677, R.C.M. 1935; R.C.M. 1947, 93-7207.

25-31-812. Repealed. Sec. 63, Ch. 16, L. 1991.

History: Ap. p. Sec. 604, p. 162, Bannack Stat.; re-en. Sec. 710, p. 178, Cod. Stat. 1871; re-en. Sec. 770, 1st Div. Rev. Stat. 1879; re-en. Sec. 790, 1st Div. Comp. Stat. 1887; amd. Sec. 1607, C. Civ. Proc. 1895; re-en. Sec. 7045, Rev. C. 1907; re-en. Sec. 9678, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 885; re-en. Sec. 9678, R.C.M. 1935; Sec. 93-7208, R.C.M. 1947; Ap. p. Sec. 224, C. Civ. Proc. 1895; re-en. Sec. 6334, Rev. C. 1907; re-en. Sec. 8887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 194; re-en. Sec. 8887, R.C.M. 1935; amd. Sec. 4, Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971; Sec. 93-1205, R.C.M. 1947; R.C.M. 1947, 93-1205(part), 93-7208.

Part 9

Judgment

25-31-901 through 25-31-905. Repealed. Sec. 63, Ch. 16, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

25-31-901. En. Sec. 1580, C. Civ. Proc. 1895; re-en. Sec. 7031, Rev. C. 1907; re-en. Sec. 9664, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 871; re-en. Sec. 9664, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1937; amd. Sec. 2, Ch. 91, L. 1939; R.C.M. 1947, 93-7001; amd. Sec. 125, Ch. 575, L. 1981.

25-31-902. En. Sec. 1581, C. Civ. Proc. 1895; re-en. Sec. 7032, Rev. C. 1907; re-en. Sec. 9665, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 872; re-en. Sec. 9665, R.C.M. 1935; R.C.M. 1947, 93-7002.

25-31-903. En. Sec. 605, p. 163, Bannack Stat.; re-en. Sec. 711, p. 179, Cod. Stat. 1871; re-en. Sec. 771, 1st Div. Rev. Stat. 1879; re-en. Sec. 791, 1st Div. Comp. Stat. 1887; amd. Sec. 1621, C. Civ. Proc. 1895; re-en. Sec. 7047, Rev. C. 1907; re-en. Sec. 9680, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 890; re-en. Sec. 9680, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1937; amd. Sec. 19, Ch. 491, L. 1973; R.C.M. 1947, 93-7302(part).

25-31-904. En. Sec. 608, p. 163, Bannack Stat.; re-en. Sec. 714, p. 180, Cod. Stat. 1871; re-en. Sec. 774, 1st Div. Rev. Stat. 1879; re-en. Sec. 794, 1st Div. Comp. Stat. 1887; amd. Secs. 1622, 1623, C. Civ. Proc. 1895; re-en. Secs. 7048, 7049, Rev. C. 1907; re-en. Secs. 9681, 9682, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 891, 892; re-en. Secs. 9681, 9682, R.C.M. 1935; R.C.M. 1947, 93-7303, 93-7304.

25-31-905. En. Sec. 610, p. 163, Bannack Stat.; re-en. Sec. 715, p. 180, Cod. Stat. 1871; re-en. Sec. 775, 1st Div. Rev. Stat. 1879; re-en. Sec. 795, 1st Div. Comp. Stat. 1887; re-en. Sec. 1625, C. Civ. Proc. 1895; re-en. Sec. 7051, Rev. C. 1907; re-en. Sec. 9684, R.C.M. 1921; re-en. Sec. 9684, R.C.M. 1935; R.C.M. 1947, 93-7306.

25-31-906. Judgment when amount found due exceeds the jurisdiction of the court. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess and judgment may be entered for the residue.

History: En. Sec. 610, p. 163, Bannack Stat.; re-en. Sec. 716, p. 180, Cod. Stat. 1871; re-en. Sec. 776, 1st Div. Rev. Stat. 1879; re-en. Sec. 796, 1st Div. Comp. Stat. 1887; re-en. Sec. 1626, C. Civ. Proc. 1895; re-en. Sec. 7052, Rev. C. 1907; re-en. Sec. 9685, R.C.M. 1921; Cal. C. Civ. Pro. Sec. 894; re-en. Sec. 9685, R.C.M. 1935; R.C.M. 1947, 93-7307.

Cross-References

Civil jurisdiction, 3-10-301.

25-31-907. Judgment when counterclaim has been established. Where a counterclaim is established which equals the plaintiff's demand, the judgment must be in favor of the defendant. Where it is less than the plaintiff's demand, the plaintiff must have judgment for the residue only. Where it exceeds the plaintiff's demand, the defendant must have judgment for the excess.

History: En. Sec. 1627, C. Civ. Proc. 1895; re-en. Sec. 7053, Rev. C. 1907; re-en. Sec. 9686, R.C.M. 1921; re-en. Sec. 9686, R.C.M. 1935; R.C.M. 1947, 93-7308.

25-31-908. Judgment when defendant subject to arrest. When the judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, the fact that the defendant is so subject must be stated in the judgment.

History: En. Sec. 612, p. 164, Bannack Stat.; re-en. Sec. 718, p. 179, Cod. Stat. 1871; re-en. Sec. 778, 1st Div. Rev. Stat. 1879; re-en. Sec. 798, 1st Div. Comp. Stat. 1887; amd. Sec. 1624, C. Civ. Proc. 1895; re-en. Sec. 7050, Rev. C. 1907; re-en. Sec. 9683, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 893; re-en. Sec. 9683, R.C.M. 1935; R.C.M. 1947, 93-7305(part).

Cross-References

Costs in Justice's Court, Title 25, ch. 31, part 10.

25-31-909 and 25-31-910 reserved.

25-31-911. Repealed. Sec. 63, Ch. 16, L. 1991, and Sec. 4, Ch. 285, L. 1991.

History: En. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 1630, C. Civ. Proc. 1895; re-en. Sec. 7056, Rev. C. 1907; re-en. Sec. 9689, R.C.M. 1921; Cal. C. Civ. Proc. Sec 897; re-en. Sec. 9689, R.C.M. 1935; amd. Sec. 20, Ch. 491, L. 1973; R.C.M. 1947, 93-7311.

25-31-912. Repealed. Sec. 63, Ch. 16, L. 1991, and Sec. 4, Ch. 285, L. 1991.

History: En. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 1631, C. Civ. Proc. 1895; re-en. Sec. 7057, Rev. C. 1907; re-en. Sec. 9690, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 898; re-en. Sec. 9690, R.C.M. 1935; R.C.M. 1947, 93-7312.

25-31-913. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 1632, C. Civ. Proc. 1895; amd. Sec. 1, p. 242, L. 1897; re-en. Sec. 7058, Rev. C. 1907; re-en. Sec. 9691, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 899; re-en. Sec. 9691, R.C.M. 1935; R.C.M. 1947, 93-7313; amd. Sec. 1, Ch. 285, L. 1991.

25-31-914. Lien on real property. The judgment rendered in a justice's court creates a lien upon any lands of the defendant upon the filing of a transcript of the original docket, certified by the clerk of the justice's court, with the office of the clerk of the district court of the county in which the lands are situated. When so filed and from the time of filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time or which he may afterwards and before the lien expires acquire. The lien continues for 6 years unless the judgment be previously satisfied.

History: En. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800,

1st Div. Comp. Stat. 1887; en. Sec. 1633, C. Civ. Proc. 1895; amd. Sec. 2, p. 243, L. 1897; re-en. Sec. 7059, Rev. C. 1907; re-en. Sec. 9692, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 900; re-en. Sec. 9692, R.C.M. 1935; R.C.M. 1947, 93-7314; amd. Sec. 2, Ch. 285, L. 1991.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

25-31-915. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1529, C. Civ. Proc. 1895; re-en. Sec. 7014, Rev. C. 1907; re-en. Sec. 9647, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 859; re-en. Sec. 9647, R.C.M. 1935; R.C.M. 1947, 93-6810(part).

Part 10
Costs

Part Cross-References

Fines, penalties, forfeitures, fees, and costs in Justices' Courts, Title 3, ch. 10, part 6.

25-31-1001. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1685, C. Civ. Proc. 1895; re-en. Sec. 7083, Rev. C. 1907; re-en. Sec. 9716, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 924; amd. Sec. 19, Ch. 177, L. 1935; re-en. Sec. 9716, R.C.M. 1935; amd. Sec. 1, Ch. 156, L. 1937; R.C.M. 1947, 93-7706.

25-31-1002. How costs taxed. In a justice's or city court, no cost bill need be filed, but the justice or judge must tax the same and make an itemized statement of all the costs incurred by each party in his docket.

History: En. Sec. 1868, C. Civ. Proc. 1895; re-en. Sec. 7171, Rev. C. 1907; re-en. Sec. 9804, R.C.M. 1921; re-en. Sec. 9804, R.C.M. 1935; R.C.M. 1947, 93-8620(part).

Cross-References

Contents of docket, 3-10-501.

25-31-1003. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 643, p. 171, Bannack Stat.; re-en. Sec. 748, p. 186, Cod. Stat. 1871; re-en. Sec. 808, 1st Div. Rev. Stat. 1879; re-en. Sec. 828, 1st Div. Comp. Stat. 1887; re-en. Sec. 1629, C. Civ. Proc. 1895; re-en. Sec. 7055, Rev. C. 1907; re-en. Sec. 9688, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 896; re-en. Sec. 9688, R.C.M. 1935; R.C.M. 1947, 93-7310.

25-31-1004. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1868, C. Civ. Proc. 1895; re-en. Sec. 7171, Rev. C. 1907; re-en. Sec. 9804, R.C.M. 1921; re-en. Sec. 9804, R.C.M. 1935; R.C.M. 1947, 93-8620(part).

25-31-1005. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; R.C.M. 1947, 93-2908(part).

Part 11
Execution of Judgment

25-31-1101. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 615, p. 165, Bannack Stat.; re-en. Sec. 721, p. 181, Cod. Stat. 1871; re-en. Sec. 781, 1st Div. Rev. Stat. 1879; re-en. Sec. 801, 1st Div. Comp. Stat. 1887; amd. Sec. 1640, C. Civ. Proc. 1895; re-en. Sec. 7060, Rev. C. 1907; amd. Sec. 1, Ch. 38, L. 1921; re-en. Sec. 9693, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 901; re-en. Sec. 9693, R.C.M. 1935; R.C.M. 1947, 93-7401; amd. Sec. 126, Ch. 575, L. 1981.

25-31-1102. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 616, p. 165, Bannack Stat.; amd. Sec. 722, p. 181, Cod. Stat. 1871; re-en. Sec. 782, 1st Div. Rev. Stat. 1879; re-en. Sec. 802, 1st Div. Comp. Stat. 1887; amd. Sec. 1641, C. Civ. Proc. 1895; amd. Sec. 1641, p. 243, L. 1897; re-en. Sec. 7061, Rev. C. 1907; re-en. Sec. 9694, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 902; re-en. Sec. 9694, R.C.M. 1935; amd. Sec. 21, Ch. 491, L. 1973; R.C.M. 1947, 93-7402.

25-31-1103. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1642, C. Civ. Proc. 1895; re-en. Sec. 7062, Rev. C. 1907; re-en. Sec. 9695, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 903; re-en. Sec. 9695, R.C.M. 1935; R.C.M. 1947, 93-7403.

25-31-1104. Manner of execution. The sheriff or constable to whom the execution is directed must execute the same in the same manner as the sheriff is required by the provisions of chapter 13 to proceed upon executions directed to him; and the constable, when the execution is directed to him, is vested for that purpose with all the powers of the sheriff.

History: En. Sec. 617, p. 165, Bannack Stat.; re-en. Sec. 723, p. 181, Cod. Stat. 1871; re-en. Sec. 783, 1st Div. Rev. Stat. 1879; re-en. Sec. 803, 1st Div. Comp. Stat. 1887; amd. Sec. 1643, C. Civ. Proc. 1895; re-en. Sec. 7063, Rev. C. 1907; re-en. Sec. 9696, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 904; re-en. Sec. 9696, R.C.M. 1935; R.C.M. 1947, 93-7404.

Cross-References

Constables governed by law prescribing Sheriffs' duties, 3-10-702.

Execution and return of writ, Title 25, ch. 13, part 4.

25-31-1105. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1644, C. Civ. Proc. 1895; re-en. Sec. 7064, Rev. C. 1907; re-en. Sec. 9697, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 905; re-en. Sec. 9697, R.C.M. 1935; R.C.M. 1947, 93-7405.

25-31-1106. Discharge of imprisoned judgment debtor. The provisions of part 3 of chapter 14 in relation to the examination and discharge of a defendant imprisoned on execution in a civil action shall apply to justices' courts, and justices of the peace shall have the same powers in their courts as are by said sections granted to the judge.

History: En. Sec. 673, p. 172, Cod. Stat. 1871; re-en. Sec. 733, 1st Div. Rev. Stat. 1879; re-en. Sec. 753, 1st Div. Comp. Stat. 1887; re-en. Sec. 1546, C. Civ. Proc. 1895; re-en. Sec. 7025, Rev. C. 1907; re-en. Sec. 9658, R.C.M. 1921; re-en. Sec. 9658, R.C.M. 1935; R.C.M. 1947, 93-6907.

25-31-1107 through 25-31-1110 reserved.

25-31-1111. Collection of judgment against county or county officer. When a judgment is rendered against the county or against any county officer in an action prosecuted against him in his name of office, when the same is to be paid by the county, no execution must issue upon the judgment, but the same must be paid as other county charges. When so collected, the same must be paid by the county treasurer to the proper person to whom the same is adjudged, upon the delivery of a proper voucher therefor.

History: En. Sec. 342, 5th Div. Rev. Stat. 1879; re-en. Sec. 751, 5th Div. Comp. Stat. 1887; amd. Sec. 4199, Pol. C. 1895; re-en. Sec. 2879, Rev. C. 1907; re-en. Sec. 4450, R.C.M. 1921; re-en. Sec. 4450, R.C.M. 1935; R.C.M. 1947, 16-811.

Cross-References

Payments of judgments against governmental entities, 2-9-316.

Judgments against county or county officers, 25-13-205.

Garnishment of public officers, 25-13-504.

Governmental property exempt from execution, 25-13-613.

CHAPTER 32

PROCEDURE IN CITY COURTS

(Repealed. Sec. 63, Ch. 16, L. 1991)

Chapter Compiler's Comments

Histories of Repealed Sections:

25-32-101. En. Sec. 1703, C. Civ. Proc. 1895; re-en. Sec. 7095, Rev. C. 1907; re-en. Sec. 9728, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 933; re-en. Sec. 9728, R.C.M. 1935; R.C.M. 1947, 93-7804; amd. Sec. 9, Ch. 543, L. 1987.

25-32-102. En. Sec. 1700, C. Civ. Proc. 1895; re-en. Sec. 7092, Rev. C. 1907; re-en. Sec. 9725, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 929; re-en. Sec. 9725, R.C.M. 1935; R.C.M. 1947, 93-7801; amd. Sec. 10, Ch. 543, L. 1987.

25-32-103. En. Sec. 1701, C. Civ. Proc. 1895; re-en. Sec. 7093, Rev. C. 1907; re-en. Sec. 9726, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 930; re-en. Sec. 9726, R.C.M. 1935; R.C.M. 1947, 93-7802; amd. Sec. 11, Ch. 543, L. 1987.

25-32-104. En. Sec. 1702, C. Civ. Proc. 1895; re-en. Sec. 7094, Rev. C. 1907; re-en. Sec. 9727, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 931; re-en. Sec. 9727, R.C.M. 1935; R.C.M. 1947, 93-7803; amd. Sec. 12, Ch. 543, L. 1987.

CHAPTER 33

APPEAL TO DISTRICT COURT FROM JUSTICES' AND CITY COURTS

Part 1 — Filing the Appeal

25-33-101. Exclusive method of review.
25-33-102. Time for appeal.
25-33-103. How appeal taken.
25-33-104. Papers to be transmitted.

Part 2 — Undertaking on Appeal—Stay of Execution

25-33-201. Undertaking on appeal.
25-33-202. Undertaking when prevailing party appeals.
25-33-203. Justification of sureties.
25-33-204. Stay of execution when undertaking filed.
25-33-205. Deposit of money in lieu of undertaking.
25-33-206. Waiver of undertaking or deposit.
25-33-207. Defective undertaking.

Part 3 — Proceedings in District Court

25-33-301. Trial de novo — pleadings, conduct of trial.
25-33-302. Procedure upon reversal on issue of law.
25-33-303. Appeal from judgment by default.
25-33-304. Dismissal of appeal upon delay — costs and damages.
25-33-305. Costs when appeal unsuccessful.
25-33-306. Effect of judgment of district court.

Chapter Cross-References

Appeal of criminal cases from Justices' or City Courts, 46-17-311.

Part 1

Filing the Appeal

Part Cross-References

City Attorney to prosecute, 3-11-301.

25-33-101. Exclusive method of review. A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed in this chapter and not otherwise. A party aggrieved may appeal in the cases prescribed in this chapter.

History: Ap. p. Sec. 248, p. 94, Bannack Stat.; re-en. Sec. 317, p. 199, L. 1867; re-en. Sec. 366, p. 107, Cod. Stat. 1871; re-en. Sec. 405, p. 149, L. 1877; re-en. Sec. 405, 1st Div. Rev. Stat. 1879; re-en. Sec. 418, 1st Div. Comp. Stat. 1887; re-en. Sec. 1720, C. Civ. Proc. 1895; re-en. Sec. 7096, Rev. C. 1907; re-en. Sec. 9729, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 936; re-en. Sec. 9729, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; Sec. 93-8001, R.C.M. 1947; Ap. p. Sec. 248, p. 94, Bannack Stat.; amd. Sec. 319, p. 199, L. 1867; re-en. Sec. 368, p. 107, Cod. Stat. 1871; re-en. Sec. 407, p. 150, L. 1877; re-en. Sec. 407, 1st Div. Rev. Stat. 1879; re-en. Sec. 420, 1st Div. Comp. Stat. 1887; re-en. Sec. 1721, C. Civ. Proc. 1895; re-en. Sec. 7097, Rev. C. 1907; re-en. Sec. 9730, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 938; re-en. Sec. 9730, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; Sec. 93-8002, R.C.M. 1947; R.C.M. 1947, 93-8001(part), 93-8002(part).

25-33-102. Time for appeal. Any party dissatisfied with the judgment rendered in a civil action in a city or justice's court may appeal therefrom to the district court of the county at any time within 30 days after the rendition of the judgment.

History: En. Sec. 637, p. 169, Bannack Stat.; re-en. Sec. 742, p. 185, Cod. Stat. 1871; re-en. Sec. 802, 1st Div. Rev. Stat. 1879; re-en. Sec. 822, 1st Div. Comp. Stat. 1887; amd. Sec. 1760, C. Civ. Proc. 1895; re-en. Sec. 7121, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1911; re-en. Sec. 9754, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 974; re-en. Sec. 9754, R.C.M. 1935; R.C.M. 1947, 93-7901(part).

Cross-References

Kinds of jurisdiction, 3-5-301.

Appellate jurisdiction, 3-5-303.

25-33-103. How appeal taken. The appeal is taken by serving a copy of the notice of appeal on the adverse party or his attorney and by filing the original notice of appeal with the justice or judge. The order of serving and filing is immaterial.

History: En. Sec. 637, p. 169, Bannack Stat.; re-en. Sec. 742, p. 185, Cod. Stat. 1871; re-en. Sec. 802, 1st Div. Rev. Stat. 1879; re-en. Sec. 822, 1st Div. Comp. Stat. 1887; amd. Sec. 1760, C. Civ. Proc. 1895; re-en. Sec. 7121, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1911; re-en. Sec. 9754, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 974; re-en. Sec. 9754, R.C.M. 1935; R.C.M. 1947, 93-7901(part).

25-33-104. Papers to be transmitted. Upon the filing of the notice of appeal and the undertaking when required by 25-33-201, 25-33-203, and 25-33-205, the justice or judge must, within 10 days, upon the payment of the fees therefor, transmit to the clerk of the district court a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal, and the undertaking; and the justice or judge may be compelled by the district court, by an order entered upon motion, to transmit such papers and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice or judge by the party or his attorney.

History: En. Sec. 639, p. 170, Bannack Stat.; re-en. Sec. 744, p. 186, Cod. Stat. 1871; re-en. Sec. 804, 1st Div. Rev. Stat. 1879; re-en. Sec. 824, 1st Div. Comp. Stat. 1887; en. Sec. 1762, C. Civ. Proc. 1895; re-en. Sec. 7123, Rev. C. 1907; re-en. Sec. 9756, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 977; re-en. Sec. 9756, R.C.M. 1935; R.C.M. 1947, 93-7903; amd. Sec. 127, Ch. 575, L. 1981; amd. Sec. 1, Ch. 63, L. 1991.

Part 2
Undertaking on Appeal — Stay of Execution

Part Cross-References
Undertakings for security, Title 25, ch. 1, part 4.

25-33-201. Undertaking on appeal. (1) Except as provided in subsection (4), an appeal from a justice's or city court is not effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money. The undertaking must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs if the appeal be withdrawn or dismissed or the amount of any judgment and all costs that may be recovered against him in the action in the district court.

(2) Except as provided in subsection (4), an appeal from a justice's or city court is not effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to twice the value of the property, including costs, when the judgment is for the recovery of specific personal property. When the action is for the recovery of specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from and obey the order of the court made therein if the appeal be withdrawn or dismissed or pay any judgment and costs that may be recovered against him in said action in the district court and obey any order made by the court therein.

(3) Except as provided in subsection (4), when the judgment appealed from directs the delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that:

(a) during the possession of such property by the appellant, he will not commit or suffer to be committed any waste thereon; and

(b) if the appeal be dismissed or withdrawn or the judgment affirmed or judgment be recovered against him in the action in the district court, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof or he will pay any judgment and costs that may be recovered against him in said action in the district court, not exceeding a sum to be fixed by the justice or judge of the court from which the appeal is to be taken, which sum must be specified in the undertaking.

(4) When the appealing party is determined by the court to be indigent, the district court shall waive the undertaking requirements of this section.

History: En. Sec. 638, p. 169, Bannack Stat.; re-en. Sec. 743, p. 185, Cod. Stat. 1871; re-en. Sec. 803, 1st Div. Rev. Stat. 1879; re-en. Sec. 823, 1st Div. Comp. Stat. 1887; amd. Sec. 1763, C. Civ. Proc. 1895; en. Sec. 1, Ch. 186, L. 1907; Sec. 7124, Rev. C. 1907; re-en. Sec. 9757, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 978; re-en. Sec. 9757, R.C.M. 1935; R.C.M. 1947, 93-7904(part); amd. Sec. 128, Ch. 575, L. 1981; amd. Sec. 2, Ch. 63, L. 1991.

25-33-202. Undertaking when prevailing party appeals. If the party in whose favor the judgment is rendered appeals, the undertaking must be in the sum of $100 and conditioned that he will pay all costs that may be awarded against him and obey any order of court made in the action.

History: En. Sec. 640, p. 170, Bannack Stat.; re-en. Sec. 745, p. 186, Cod. Stat. 1871; re-en. Sec. 805, 1st Div. Rev. Stat. 1879; re-en. Sec. 825, 1st Div. Comp. Stat. 1887; en. Sec. 1764, C. Civ. Proc. 1895; re-en. Sec. 7125, Rev. C. 1907; re-en. Sec. 9758, R.C.M. 1921; re-en. Sec. 9758, R.C.M. 1935; R.C.M. 1947, 93-7905(part).

25-33-203. Justification of sureties. The adverse party may except to the sufficiency of the sureties within 5 days after the filing of the undertaking, and unless they or other sureties justify before the justice or a judge of the district court of the county in which such action has been tried within 5 days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given. The sureties on the undertakings mentioned in this part must justify as provided in 33-26-102.

History: Ap. p. Sec. 638, p. 169, Bannack Stat.; re-en. Sec. 743, p. 185, Cod. Stat. 1871; re-en. Sec. 803, 1st Div. Rev. Stat. 1879; re-en. Sec. 823, 1st Div. Comp. Stat. 1887; amd. Sec. 1763, C. Civ. Proc. 1895; en. Sec. 1, Ch. 186, L. 1907; Sec. 7124, Rev. C. 1907; re-en. Sec. 9757, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 978; re-en. Sec. 9757, R.C.M. 1935; Sec. 93-7904, R.C.M. 1947; Ap. p. Sec. 640, p. 170, Bannack Stat.; re-en. Sec. 745, p. 186, Cod. Stat. 1871; re-en. Sec. 805, 1st Div. Rev. Stat. 1879; re-en. Sec. 825, 1st Div. Comp. Stat. 1887; en. Sec. 1764, C. Civ. Proc. 1895; re-en. Sec. 7125, Rev. C. 1907; re-en. Sec. 9758, R.C.M. 1921; re-en. Sec. 9758, R.C.M. 1935; Sec. 93-7905, R.C.M. 1947; R.C.M. 1947, 93-7904(part), 93-7905(part).

25-33-204. Stay of execution when undertaking filed. If an execution be issued, on the filing of the undertaking, the justice or judge must direct the officer to stay all proceedings on the same. Such officer must, upon the payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees on the execution be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

History: En. Sec. 642, p. 170, Bannack Stat.; re-en. Sec. 747, p. 186, Cod. Stat. 1871; re-en. Sec. 807, 1st Div. Rev. Stat. 1879; re-en. Sec. 827, 1st Div. Comp. Stat. 1887; amd. Sec. 1765, C. Civ. Proc. 1895; re-en. Sec. 7126, Rev. C. 1907; re-en. Sec. 9759, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 979; re-en. Sec. 9759, R.C.M. 1935; R.C.M. 1947, 93-7906.

25-33-205. Deposit of money in lieu of undertaking. Whenever an undertaking is required on appeal by the provisions of this chapter, a deposit in the court below of the amount of the judgment appealed from plus $300 or, if the judgment is for the recovery of specific personal property, the value of the property plus $300 or, if the party in whose favor the judgment is rendered appeals, $100 is equivalent to filing the undertaking. The justice or judge shall transmit the money to the clerk of the district court, who shall pay it out on the order of the court.

History: Ap.p. Sec. 638, p. 169, Bannack Stat.; re-en. Sec. 743, p. 185, Cod. Stat. 1871; re-en. Sec. 803, 1st Div. Rev. Stat. 1879; re-en. Sec. 823, 1st Div. Comp. Stat. 1887; amd. Sec. 1763, C. Civ. Proc. 1895; en. Sec. 1, Ch. 186, L. 1907; Sec. 7124, Rev. C. 1907; re-en. Sec. 9757, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 978; re-en. Sec. 9757, R.C.M. 1935; Sec. 93-7904, R.C.M. 1947; Ap.p. Sec. 388, p. 112, Cod. Stat. 1871; re-en. Sec. 417, p. 153, L. 1877; re-en. Sec. 417, 1st Div. Rev. Stat. 1879; re-en. Sec. 430, 1st Div. Comp. Stat. 1887; amd. Sec. 1732, C. Civ. Proc. 1895; re-en. Sec. 7108, Rev. C. 1907; re-en. Sec. 9741, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 948; re-en. Sec. 9741, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; Sec. 93-8013, R.C.M. 1947; R.C.M. 1947, 93-7904(part), 93-8013(part); amd. Sec. 129, Ch. 575, L. 1981.

Cross-References

Deposit of money in lieu of undertaking, 25-1-401, 25-31-115.

25-33-206. Waiver of undertaking or deposit. In all cases where an undertaking is required on appeal by the provisions of this chapter, the undertaking or deposit may be waived by the written consent of the respondent.

History: En. Sec. 388, p. 112, Cod. Stat. 1871; re-en. Sec. 417, p. 153, L. 1877; re-en. Sec. 417, 1st Div. Rev. Stat. 1879; re-en. Sec. 430, 1st Div. Comp. Stat. 1887; amd. Sec. 1732, C. Civ. Proc. 1895; re-en. Sec. 7108, Rev. C. 1907; re-en. Sec. 9741, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 948; re-en. Sec. 9741, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-8013(part).

25-33-207. Defective undertaking. No appeal shall be dismissed for insufficiency of the undertaking thereon or for any defect or irregularity therein if a good and sufficient undertaking be filed in the district court at or before the hearing of the motion to dismiss the appeal, which undertaking must be approved by the district judge.

History: En. Sec. 1767, C. Civ. Proc. 1895; re-en. Sec. 7128, Rev. C. 1907; re-en. Sec. 9761, R.C.M. 1921; re-en. Sec. 9761, R.C.M. 1935; R.C.M. 1947, 93-7908.

Part 3

Proceedings in District Court

25-33-301. Trial de novo — pleadings, conduct of trial. (1) All appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on such terms as may be just, allow other or amended pleadings to be filed in such action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

History: (1)En. Sec. 641, p. 170, Bannack Stat.; re-en. Sec. 746, p. 186, Cod. Stat. 1871; re-en. Sec. 806, 1st Div. Rev. Stat. 1879; re-en. Sec. 826, 1st Div. Comp. Stat. 1887; amd. Sec. 1761, C. Civ. Proc. 1895; re-en. Sec. 7122, Rev. C. 1907; re-en. Sec. 9755, R.C.M. 1921; re-en. Sec. 9755, R.C.M. 1935; Sec. 93-7902, R.C.M. 1947; (2)En. Sec. 1766, C. Civ. Proc. 1895; re-en. Sec. 7127, Rev. C. 1907; re-en. Sec. 9760, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 980; re-en. Sec. 9760, R.C.M. 1935; Sec. 93-7907, R.C.M. 1947; R.C.M. 1947, 93-7902(part), 93-7907(part).

Cross-References

Trials, Title 25, ch. 7.

25-33-302. Procedure upon reversal on issue of law. When a judgment is reversed or set aside on a question of law arising in the justice's or city court, the district court must either try the case anew or render a judgment.

History: En. Sec. 641, p. 170, Bannack Stat.; re-en. Sec. 746, p. 186, Cod. Stat. 1871; re-en. Sec. 806, 1st Div. Rev. Stat. 1879; re-en. Sec. 826, 1st Div. Comp. Stat. 1887; amd. Sec. 1761, C. Civ. Proc. 1895; re-en. Sec. 7122, Rev. C. 1907; re-en. Sec. 9755, R.C.M. 1921; re-en. Sec. 9755, R.C.M. 1935; R.C.M. 1947, 93-7902(part).

Cross-References

Judgment, Title 25, ch. 9.

Issues defined, types of issues, 25-31-801.

25-33-303. Appeal from judgment by default. There is no appeal from a judgment by default rendered in a justice's or city court except on questions of law which appear on the face of the papers or proceedings and except in cases when the justice's or city court has abused its discretion in setting aside or refusing to set aside a default or judgment. If the judgment by default is set aside, the district court must allow pleadings to be filed and try the case.

History: En. Sec. 641, p. 170, Bannack Stat.; re-en. Sec. 746, p. 186, Cod. Stat. 1871; re-en. Sec. 806, 1st Div. Rev. Stat. 1879; re-en. Sec. 826, 1st Div. Comp. Stat. 1887; amd. Sec. 1761, C. Civ. Proc. 1895; re-en. Sec. 7122, Rev. C. 1907; re-en. Sec. 9755, R.C.M. 1921; re-en. Sec. 9755, R.C.M. 1935; R.C.M. 1947, 93-7902(part).

Cross-References

Issues defined, types of issues, 25-31-801.

25-33-304. Dismissal of appeal upon delay — costs and damages. For a failure to prosecute an appeal or unnecessary delay in bringing it to a hearing, the district court may order the appeal to be dismissed, with costs; and if it appear to such court that the appeal was made solely for delay, it may add to the costs such damages as may be just, not exceeding 25% of the judgment appealed from.

History: En. Sec. 1766, C. Civ. Proc. 1895; re-en. Sec. 7127, Rev. C. 1907; re-en. Sec. 9760, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 980; re-en. Sec. 9760, R.C.M. 1935; R.C.M. 1947, 93-7907(part).

25-33-305. Costs when appeal unsuccessful. If the party appealing fails to reduce the judgment against him or to enlarge the judgment in his favor appealed from $10 or more or reverse the same in the district court, he shall not recover any costs of appeal.

History: En. Sec. 640, p. 170, Bannack Stat.; re-en. Sec. 745, p. 186, Cod. Stat. 1871; re-en. Sec. 805, 1st Div. Rev. Stat. 1879; re-en. Sec. 825, 1st Div. Comp. Stat. 1887; en. Sec. 1764, C. Civ. Proc. 1895; re-en. Sec. 7125, Rev. C. 1907; re-en. Sec. 9758, R.C.M. 1921; re-en. Sec. 9758, R.C.M. 1935; R.C.M. 1947, 93-7905(part).

25-33-306. Effect of judgment of district court. Judgments rendered in the district court on appeal shall have the same force and effect and may be enforced in the same manner as judgments in actions commenced in the district court.

History: En. Sec. 1766, C. Civ. Proc. 1895; re-en. Sec. 7127, Rev. C. 1907; re-en. Sec. 9760, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 980; re-en. Sec. 9760, R.C.M. 1935; R.C.M. 1947, 93-7907(part).

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

CHAPTER 34

SMALL CLAIMS PROCEDURE — DISTRICT COURT

Part 1 — General Provisions—Jurisdiction

25-34-101. Purpose — liberal construction.
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25-34-104. Venue.
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25-34-301. Jury — waiver — request.
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25-34-401. Entry of judgment.
25-34-402. Costs.
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Chapter Cross-References

Small claims courts, Title 3, ch. 12.

Small claims procedure — Justice's Court, Title 25, ch. 35.

Part 1

General Provisions — Jurisdiction

25-34-101. Purpose — liberal construction. It is the purpose of this chapter to provide a speedy remedy in claims falling hereunder and to promote a forum in which such claims may be heard and disposed of without the necessity of formal trial. For this reason, the provisions hereof should be liberally construed to provide an informal but equitable means of justice, and the small claims court judges are required to assist all parties before them to obtain substantial justice.

History: En. 93-328 by Sec. 7, Ch. 519, L. 1975; R.C.M. 1947, 93-328.

Cross-References

Small claims courts — purpose — liberal construction, 3-12-101.

Small claims courts — assistance to claimants, 3-12-202.

25-34-102. Jurisdiction — joinder — interpleader. (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when the action arises out of a contract, express or implied, the amount of the claim, exclusive of costs, does not exceed $3,000, and the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and if the total value of money claimed or property sought does not exceed $3,000.

(3) The small claims court has jurisdiction over an interpleader under 25-34-106 in which the amount claimed does not exceed $3,000.

History: **En. 93-329 by Sec. 8, Ch. 519, L. 1975; R.C.M. 1947, 93-329(1); amd. Sec. 1, Ch. 530, L. 1987; amd. Sec. 3, Ch. 438, L. 1989; amd. Sec. 44, Ch. 10, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 10 throughout section increased Small Claims Court jurisdiction from $2,500 to $3,000; and made minor changes in style.

Cross-References

Small claims court — jurisdiction — removal from District Court, 3-12-106.

25-34-103. Removal from district court. A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed $2,500. The small claims court shall hear any action so removed from the district court.

History: **En. 93-329 by Sec. 8, Ch. 519, L. 1975; R.C.M. 1947, 93-329(2); amd. Sec. 4, Ch. 438, L. 1989.**

Cross-References

Small claims court — jurisdiction — removal from District Court, 3-12-106.

25-34-104. Venue. Proper venue for actions commenced in small claims court is the same as that provided by law for civil actions commenced in district court.

History: **En. 93-331 by Sec. 10, Ch. 519, L. 1975; R.C.M. 1947, 93-331.**

Cross-References

Small claims court — location — hours, 3-12-105.

Small claims court — venue, Title 25, ch. 2, 25-34-504.

25-34-105. Parties — representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency thereof.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court, except as set forth in subsection (3) herein.

(3) An individual shall represent himself in the small claims court. A partnership shall be represented by a partner or one of its employees. A union shall be represented by a union member or union employee. A corporation shall be represented by one of its employees. An association shall be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) No party may file an assigned claim in the small claims court.

(6) Notwithstanding any other provision of this section, an executor or administrator of a decedent's estate, a guardian, or a conservator may be a party in the small claims court.

History: **En. 93-330 by Sec. 9, Ch. 519, L. 1975; R.C.M. 1947, 93-330; amd. Sec. 8, Ch. 409, L. 1979.**

Cross-References

When guardian necessary — how appointed, 25-31-602.

Defendant not in military service, 25-34-201.

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Enforcement of minor's rights, 41-1-202.

25-34-106. Interpleader actions. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the small claims court when any person appears before a judge or clerk of court and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the clerk of court at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Small Claims Court of the .... Judicial District in and for the County of ...., State of Montana.

. . . . ,
Plaintiff
vs.
. . . . , INTERPLEADER AFFIDAVIT
Defendant
and
. . . . ,
Defendant

State of Montana) ss

................., being duly sworn, deposes and says: That..............., a defendant, resides at .... That................, a defendant, resides at .... That the plaintiff has custody or possession of money in the amount of $....., held pursuant to the following:

. . . .
. . . .
. . . .
. . . .

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown.

. . . .
Affiant

Subscribed and sworn to before me this .... day of ...., 19....

. . . .
District Judge

. . . .
Clerk

ORDER

The State of Montana to the within named defendants, greeting:

You are hereby directed to appear and answer the within and foregoing claim at my office in .... (name, building, or residence), in ...., County of ...., State of Montana, on the .... day of ...., 19...., at the hour of ......(AM)(PM); and to have with you then and there, all books, papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition thereof; and, in addition, for costs of the action.

Dated this .... day of ...., 19.....

. . . .
District Judge

. . . .
Clerk

History: En. Sec. 3, Ch. 530, L. 1987; amd. Sec. 1, Ch. 326, L. 1991.

Part 2
Procedure Before Trial

25-34-201. Commencement of actions. (1) Actions in small claims court shall be commenced by filing an affidavit with the clerk of court. The small claims court judge shall assist any claimant in preparing an affidavit or may direct the clerk of court to provide such assistance.

(2) The clerk of court shall provide forms for the affidavits, which shall be in substantially the following form:

"In the Small Claims Court of the .... Judicial District in and for the County of ...., State of Montana.

. . . . , Plaintiff vs. . . . . , Defendant	Doc. ...... No. ...... PLAINTIFF'S COMPLAINT/ AFFIDAVIT NOTICE TO DEFENDANT, SEEKING MONEY DAMAGES

Plaintiff states that defendant(s) owe and should be ordered to pay to me the sum of ...., because on .... (date) at .... (place), the defendant(s)

. . . .
. . . .

Plaintiff declares that the defendant or defendants are not a "person in military service" or "person in the military service of the United States" as defined in Sec. 101 of the Soldiers' and Sailors' Civil Relief Act of 1940.

To the best of my knowledge and belief, the defendant named above resides at the following address or the following is the business address:

. . . .
. . . .

My printed name and printed address are as follows:

. . . .

Signed in my presence Signature: . . . .
. . . .
Clerk or Deputy Today's date:

ORDER OF THE COURT/NOTICE TO DEFENDANT

This claim has been filed against you. You must appear before this court on .... (date) at .... (time) at .... (location).

If you do not appear, a judgment may be entered against you. Costs of the action also may be charged against you. You should read the information on the back of this claim and notice. If you have any questions about the procedure, you may contact the Clerk of the Court in person at .... (location of court) or by telephone at .... (number)

. . . .
Clerk of the Court
By: . . . ."

(3) When an interpleader appears, he shall prepare an interpleader affidavit under 25-34-106. Upon the interpleader affidavit being sworn to by the affiant, the judge, justice, or clerk of the court shall file it and make a true copy and at the same time shall sign the order directing the defendant to appear and answer the claim. A copy of the order must then be served upon the defendant in the manner provided by law for service of summons.

(4) Upon the matter being decided by the court, the court may order the court costs to be reimbursed from the interpleaded funds. The clerk of the court is charged with the responsibility of disbursing the interpleaded funds in accordance with the judge's order.

History: En. 93-326, 93-332 by Secs. 5, 11, Ch. 519, L. 1975; R.C.M. 1947, 93-326(part), 93-332; amd. Sec. 2, Ch. 530, L. 1987.

Cross-References

Assistance to claimants, 3-12-202.

25-34-202. Attachment not available. Attachment or prejudgment garnishment is not available in actions brought in small claims court.

History: En. 93-338 by Sec. 17, Ch. 519, L. 1975; R.C.M. 1947, 93-338(part).

25-34-203. Order of court directing defendant to pay or answer claim. (1) Upon the filing of the affidavit and payment of the fee hereinafter provided, the clerk of court shall cause to be delivered to the sheriff of the county of the defendant's residence a copy of the affidavit together with the original and a copy of an order issued by the court, directed to the defendant, and directing the defendant to pay the claim set forth in the affidavit or deliver up the property described or, in the alternative, to appear and answer the claim set forth in the affidavit.

(2) The order shall:

(a) specify the time, date, and place set for hearing the claim;

(b) state that if the defendant fails to appear at the hearing and has not satisfied the claim, judgment will be entered against him in the amount or for the relief claimed plus costs; and

(c) be signed by the clerk of court and bear the seal of the court.

History: En. 93-333 by Sec. 12, Ch. 519, L. 1975; R.C.M. 1947, 93-333; amd. Sec. 130, Ch. 575, L. 1981.

25-34-204. Hearing date. The date for the appearance of the defendant to be set forth in the order shall be determined by the clerk of court in accordance with rules adopted by the small claims judge and shall not be more than 30 or less than 10 days from the date of the order. Service of the order and copy of the affidavit shall be made upon the defendant not less than 7 days prior to the date set for his appearance by the order. If the order is not timely served, plaintiff may have a new appearance date set by the clerk and a new order issued and delivered to the sheriff, and, if necessary, repeated orders may be issued at any time within 1 year after the commencement of the action.

History: En. 93-335 by Sec. 14, Ch. 519, L. 1975; R.C.M. 1947, 93-335.

Cross-References

Clerk of District Court as clerk of small claims court, 3-12-103.

25-34-205. Service on defendant. The original order shall be shown to the defendant and a copy of it along with a copy of the affidavit shall be served upon the defendant by the sheriff in the same manner provided by law for service of process in civil actions in district court. The provisions of law relating to sheriff's fees are applicable to this section.

History: En. 93-334 by Sec. 13, Ch. 519, L. 1975; R.C.M. 1947, 93-334.

Cross-References

Fees of the Sheriff, 7-32-2141.

Mileage and expenses of Sheriff in general, 7-32-2143.

Service of process and other papers, Title 25, ch. 3.

Collection of clerk's and Sheriff's costs after judgment, 25-10-406.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

25-34-206. Return of service. The sheriff, after effecting service, shall make return upon the original order and file it with the clerk of court.

History: En. 93-336 by Sec. 15, Ch. 519, L. 1975; R.C.M. 1947, 93-336.

25-34-207. Defendant's counterclaim. (1) If the defendant wishes to assert a counterclaim against the plaintiff, he shall file a written answer setting forth his counterclaim against the plaintiff and shall cause the answer to be served upon the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service is made upon the defendant.

(2) A counterclaim or setoff may not exceed $2,500. If a counterclaim or setoff is asserted in excess of $2,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether plaintiff's

claim is discharged thereby, leaving defendant to prosecute the balance of his claim in appropriate district court action.

History: **En. 93-337 by Sec. 16, Ch. 519, L. 1975; R.C.M. 1947, 93-337; amd. Sec. 5, Ch. 438, L. 1989.**

25-34-208. Clerk's fees. (1) The clerk of court shall collect a fee of $5:

(a) from the plaintiff upon the filing of the affidavit;

(b) from the defendant upon the filing of a written answer.

(2) The laws relating to paupers' affidavits apply to actions before the small claims courts.

History: **En. 93-344 by Sec. 23, Ch. 519, L. 1975; R.C.M. 1947, 93-344(1), (2).**

Cross-References

Poor persons not required to prepay fees, 25-10-404.

Part 3
The Trial

25-34-301. Jury — waiver — request. The plaintiff, by filing the affidavit for a proceeding in small claims court, waives the right to jury trial. Defendant may request a jury, provided such request is made not less than 48 hours prior to the date set for hearing. If defendant pleads a counterclaim or setoff, he too waives a jury trial. If a jury is requested, it shall be impaneled in the same fashion as provided for district court juries in civil cases involving less than $10,000.

History: **En. 93-340 by Sec. 19, Ch. 519, L. 1975; R.C.M. 1947, 93-340.**

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Trial juries — District Court, Title 3, ch. 15, part 5.

Selection of jury, Title 25, ch. 7, part 2.

Jurors, Rule 47, M.R.Civ.P. (see Title 25, ch. 20).

25-34-302. Proceedings informal — court reporters. (1) If the action is tried to the court, the proceedings shall be informal to the extent possible in order to dispense speedy justice to the parties. A reporter is not necessary unless the judge finds the issues sufficiently complex that a record is desirable, in which case he shall make arrangements with a court reporter of the district court to take the testimony. The judge shall make findings of fact sufficient to establish in full the basis of his judgment and shall file them with his judgment.

(2) If a jury is impaneled, it shall try all issues of fact, and in such case there shall be a court reporter.

History: **En. 93-339 by Sec. 18, Ch. 519, L. 1975; R.C.M. 1947, 93-339.**

Cross-References

Court reporters, Title 3, ch. 5, part 6.

Small claims courts — purpose — liberal construction, 3-12-101, 25-34-101.

25-34-303. Evidence — subpoena power. Both parties have the right to offer evidence, written and oral, and the judge may direct the production of evidence as he deems appropriate. The small claims court has the subpoena power granted to district courts in civil cases.

History: **En. 93-341 by Sec. 20, Ch. 519, L. 1975; R.C.M. 1947, 93-341.**

Cross-References

Powers of judicial officers as to conduct of proceedings, 3-1-402.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas and witnesses, Title 26, ch. 2.

Part 4

Judgment — Appeal

25-34-401. Entry of judgment. Upon the conclusion of a case tried to the court, the judge shall make his findings and enter judgment. Judgment shall be entered upon a jury verdict in the same manner as is provided for district court jury trials.

History: En. 93-342 by Sec. 21, Ch. 519, L. 1975; R.C.M. 1947, 93-342.

Cross-References

Judgment, Title 25, ch. 9.

Judgment — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

25-34-402. Costs. The prevailing party in an action before the small claims court is entitled to costs.

History: En. 93-344 by Sec. 23, Ch. 519, L. 1975; R.C.M. 1947, 93-344(3).

Cross-References

Costs, Title 25, ch. 31, part 10.

25-34-403. Appeals. (1) If either party is dissatisfied with the judgment of the small claims court, he may appeal to the district court of the county in which the judgment was rendered, in accordance with the procedure prescribed in chapter 33. Any such appeal must be tried de novo.

(2) In the event that the parties are represented by counsel on appeal, the judge may grant the prevailing party, in addition to costs, reasonable attorney fees.

History: En. 93-343 by Sec. 22, Ch. 519, L. 1975; R.C.M. 1947, 93-343; amd. Sec. 131, Ch. 575, L. 1981.

Cross-References

Kinds of jurisdiction, 3-5-301.

Appellate jurisdiction, 3-5-303.

25-34-404. Execution of judgment. Proceedings to enforce or collect a judgment are governed by the laws relating to executions upon district court judgments.

History: En. 93-338 by Sec. 17, Ch. 519, L. 1975; R.C.M. 1947, 93-338(part).

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

CHAPTER 35

SMALL CLAIMS PROCEDURE — JUSTICE'S COURT

Part 1 — General Provisions—Jurisdiction

(Repealed. Sec. 29, Ch. 586, L. 1981)

Part 2 — Procedure Before Trial

(Repealed. Sec. 29, Ch. 586, L. 1981)

Part 3 — The Trial

(Repealed. Sec. 29, Ch. 586, L. 1981)

Part 4 — Judgment—Appeal (Repealed. Sec. 29, Ch. 586, L. 1981)

Part 5 — General Provisions

25-35-501. Purpose.
25-35-502. Jurisdiction.
25-35-503. Removal from district court.
25-35-504. Venue.
25-35-505. Parties — representation.
25-35-506 and 25-35-507 reserved.
25-35-508. Interpleader actions.

Part 6 — Procedure Before Trial

25-35-601. Commencement of action — assistance to claimant.
25-35-602. Form of complaint and order of court/notice to defendant.
25-35-603. Hearing date.
25-35-604. Service on defendant — return.
25-35-605. Removal to justice's court — effect of failure to remove.
25-35-606. Defendant's counterclaim.
25-35-607. No further pleadings.
25-35-608. Fees.

Part 7 — The Trial

25-35-701. Proceedings to be informal.
25-35-702. Witnesses — evidence — subpoena power.
25-35-703. Record of proceedings.

Part 8 — Judgment—Appeal

25-35-801. Entry of judgment.
25-35-802. Costs.
25-35-803. Appeal to district court — commencement and scope.
25-35-804. Record on appeal.
25-35-805. Use of transcripts or tapes by district court.
25-35-806. Attorney's fees upon appeal or removal.
25-35-807. Execution of judgment.

Chapter Cross-References

Small claims division, Title 3, ch. 10, part 10.

Part 1

General Provisions — Jurisdiction (Repealed. Sec. 29, Ch. 586, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

25-35-101. En. 93-345 by Sec. 1, Ch. 572, L. 1977; R.C.M. 1947, 93-345.

25-35-102. En. 93-347 by Sec. 3, Ch. 572, L. 1977; R.C.M. 1947, 93-347(1).

25-35-103. En. 93-347 by Sec. 3, Ch. 572, L. 1977; R.C.M. 1947, 93-347(2).

25-35-104. En. 93-348 by Sec. 4, Ch. 572, L. 1977; R.C.M. 1947, 93-348.

25-35-105. En. 93-354 by Sec. 10, Ch. 572, L. 1977; R.C.M. 1947, 93-354; amd. Sec. 9, Ch. 409, L. 1979.

Part 2

Procedure Before Trial (Repealed. Sec. 29, Ch. 586, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

25-35-201. En. 93-349, 93-361 by Secs. 5, 17, Ch. 572, L. 1977; R.C.M. 1947, 93-349(part), 93-361(1); amd. Sec. 1, Ch. 501, L. 1979.

25-35-202. En. 93-350 by Sec. 6, Ch. 572, L. 1977; R.C.M. 1947, 93-350.

25-35-203. En. 93-352 by Sec. 8, Ch. 572, L. 1977; R.C.M. 1947, 93-352; amd. Sec. 2, Ch. 501, L. 1979.

25-35-204. En. 93-351 by Sec. 7, Ch. 572, L. 1977; R.C.M. 1947, 93-351.

25-35-205. En. 93-353 by Sec. 9, Ch. 572, L. 1977; R.C.M. 1947, 93-353.

25-35-206. Renumbered 25-35-212 by Code Commissioner, 1979.

25-35-207. Renumbered 25-35-213 by Code Commissioner, 1979.

25-35-211. En. Sec. 3, Ch. 501, L. 1979.

25-35-212. En. 93-349 by Sec. 5, Ch. 572, L. 1977; R.C.M. 1947, 93-349(part); amd. Sec. 4, Ch. 501, L. 1979; Sec. 25-35-206, MCA 1979; redes. 25-35-212 by Code Commissioner, 1979.

25-35-213. En. 93-364 by Sec. 20, Ch. 572, L. 1977; R.C.M. 1947, 93-364(1), (2); amd. Sec. 5, Ch. 501, L. 1979; Sec. 25-35-207, MCA 1979; redes. 25-35-213 by Code Commissioner, 1979.

Part 3

The Trial
(Repealed. Sec. 29, Ch. 586, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

25-35-301. En. 93-349 by Sec. 5, Ch. 572, L. 1977; R.C.M. 1947, 93-349(part).

25-35-302. En. 93-355 by Sec. 11, Ch. 572, L. 1977; R.C.M. 1947, 93-355.

25-35-303. En. 93-356 by Sec. 12, Ch. 572, L. 1977; R.C.M. 1947, 93-356.

Part 4

Judgment — Appeal
(Repealed. Sec. 29, Ch. 586, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

25-35-401. En. 93-362 by Sec. 18, Ch. 572, L. 1977; R.C.M. 1947, 93-362.

25-35-402. En. 93-364 by Sec. 20, Ch. 572, L. 1977; R.C.M. 1947, 93-364(3).

25-35-403. En. 93-357 by Sec. 13, Ch. 572, L. 1977; R.C.M. 1947, 93-357(part).

25-35-404. En. 93-357, 93-358 by Secs. 13, 14, Ch. 572, L. 1977; R.C.M. 1947, 93-357(part), 93-358.

25-35-405. En. 93-359 by Sec. 15, Ch. 572, L. 1977; R.C.M. 1947, 93-359.

25-35-406. En. 93-363 by Sec. 19, Ch. 572, L. 1977; R.C.M. 1947, 93-363.

Part 5

General Provisions

25-35-501. Purpose. It is the purpose of this chapter to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial.

History: En. Sec. 1, Ch. 586, L. 1981.

Cross-References

Small claims division — purpose, 3-10-1001.

25-35-502. Jurisdiction. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed $3,000, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) The small claims court has jurisdiction over an interpleader under 25-35-508 in which the amount claimed does not exceed $3,000.

History: En. Sec. 2, Ch. 586, L. 1981; amd. Sec. 6, Ch. 438, L. 1989; amd. Sec. 3, Ch. 326, L. 1991; amd. Sec. 45, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 throughout section increased Small Claims Court jurisdiction from $2,500 to $3,000.

Cross-References

Small claims division — jurisdiction — removal from District Court, 3-10-1004.

25-35-503. Removal from district court. A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed $3,000. The small claims court shall hear any action so removed from the district court.

History: En. Sec. 3, Ch. 586, L. 1981; amd. Sec. 7, Ch. 438, L. 1989; amd. Sec. 46, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 at end of first sentence increased Small Claims Court jurisdiction from $2,500 to $3,000.

Cross-References

Small claims division — jurisdiction — removal from District Court, 3-10-1004.

25-35-504. Venue. Proper venue for actions commenced in the small claims court is the same as that provided by law for civil actions commenced in justice's court.

History: En. Sec. 4, Ch. 586, L. 1981.

Cross-References

Small claims division — location — hours, 3-10-1003.

25-35-505. Parties — representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency thereof.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court.

(3) An individual may represent himself in a small claims court. A partnership may be represented by a partner or one of its employees. A union may be represented by a union member or union employee. A corporation may be represented by one of its employees. An association may be represented by one of its members or by an employee of the association. Any other kind of organization or entity may be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) No party may file an assigned claim in the small claims court.

(6) No party may file more than 10 claims in any calendar year.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the small claims court.

History: En. Sec. 5, Ch. 586, L. 1981; amd. Sec. 1, Ch. 213, L. 1985.

Cross-References

When guardian necessary — how appointed, 25-31-602.

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Enforcement of minor's rights, 41-1-202.

25-35-506 and 25-35-507 reserved.

25-35-508. Interpleader actions. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the small claims division of the justice's court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Small Claims Division of the Justice's Court of .... County, Montana before ...., Justice of the Peace.

. . . . ,
Plaintiff
vs.
. . . . , INTERPLEADER AFFIDAVIT
Defendant
and
. . . . ,
Defendant

)
State of Montana) ss
)

................, being duly sworn, deposes and says: That................, a defendant, resides at .... That................, a defendant, resides at .... That the plaintiff has custody or possession of money in the amount of $....., held pursuant to the following:

. . . .
. . . .
. . . .
. . . .

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown.

. . . .
Affiant

Subscribed and sworn to before me this .... day of ...., 19....

. . . .
Justice of the Peace

. . . .
Clerk

ORDER

The State of Montana to the within named defendants, greeting:

You are hereby directed to appear and answer the within and foregoing claim at my office in .... (name, building, or residence), in ...., County of ...., State of Montana, on the .... day of ...., 19...., at the hour of ......(AM)(PM); and to have with you then and there, all books, papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition thereof; and, in addition, for costs of the action.

Dated this .... day of ...., 19.....

. . . .
Justice of the Peace

. . . .
Clerk

History: En. Sec. 4, Ch. 326, L. 1991.

Part 6

Procedure Before Trial

25-35-601. Commencement of action — assistance to claimant. (1) A small claims action is commenced whenever any person appears before a justice of the peace or his clerk and executes a sworn small claims complaint in substantially the same form as set forth in 25-35-602.

(2) The justice shall assist any claimant in preparing his complaint or instruct his clerk to provide such assistance. The attorney general shall prepare a pamphlet explaining in plain language the procedures for prosecuting and defending a claim in small claims court and distribute copies of the pamphlet to each small claims court. The justice or his clerk shall give the plaintiff a copy when the plaintiff appears to execute his complaint, and a copy must be attached to the order of the court/notice to defendant.

History: En. Sec. 6, Ch. 586, L. 1981; amd. Sec. 3, Ch. 492, L. 1983.

25-35-602. Form of complaint and order of court/notice to defendant. The sworn complaint and order of the court shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF .... COUNTY, MONTANA
BEFORE ...., JUSTICE OF THE PEACE

. . . .

. . . .
Plaintiff
vs.
. . . .
. . . .
Defendant(s)

Complaint
Case No. .....

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that defendant is indebted to plaintiff in the sum of $......, for which sum is now due, owing, and unpaid despite demands for the payment thereof, together with plaintiff's costs herein expended.

Dated this ...... day of ...., 19....

. . . .
Plaintiff

. . . .
Plaintiff's address

Subscribed and sworn to before me this ...... day of ...., 19....

. . . .
Justice of the peace
By: . . . .
Clerk, small claims division

ORDER OF COURT/ NOTICE TO DEFENDANT

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby directed to appear and answer the within and foregoing complaint at:

. . . .
. . . .
on . . . . at . . .
Reset for . . . . at . . .
Reset for . . . . at . . .
Reset for . . . . at . . .

and to have with you, then and there, all books, papers, and witnesses needed by you to establish your defense to the claim; and you are further notified that in case you do not appear, judgment will be taken against you by default for the relief demanded in the complaint and for costs of this action, including costs of service of the complaint and order of the court/notice to defendant.

You are hereby further notified that, within 10 days of service upon you of this complaint and order, you may remove this action from the small claims court to justice's court, and that your failure to remove shall constitute a waiver of your rights to trial by jury and to representation by counsel.

To the Sheriff, Constable, or Server of Process of said county, greetings:

Make legal service and due return thereof on the defendant at

Dated this .... day of ...., 19....

. . . .
Justice of the peace
By: . . . .
Clerk, small claims division

History: En. Sec. 7, Ch. 586, L. 1981; amd. Sec. 13, Ch. 3, L. 1985.

Cross-References

Removal to Justice's Court, 25-35-605.

25-35-603. Hearing date. The date for the appearance of the defendant to be set forth in the order shall be determined by the justice of the peace or by his clerk and may not be more than 40 or less than 10 days from the date of the order. Service of the order and a copy of the sworn complaint shall be made upon the defendant not less than 5 days prior to the date set for his appearance by the order. If the order is not timely served, the plaintiff may have a new appearance date set by the justice of the peace or his clerk and a new order issued and delivered to the sheriff, constable, or other process server. If necessary, repeated orders may be issued at any time within 1 year after the commencement of the action.

History: En. Sec. 8, Ch. 586, L. 1981.

25-35-604. Service on defendant — return. (1) The original of the order and notice shall be shown to the defendant, and a copy of it along with a copy of the sworn complaint shall be served upon the defendant by the sheriff, constable, or other process server in the same manner provided by law for service of process in civil actions in justice's court. The provisions of law relating to sheriff's fees are applicable to this section.

(2) The sheriff, constable, or other process server shall, after effecting service, return the original order to the justice of the peace or his clerk.

History: En. Secs. 9, 10, Ch. 586, L. 1981.

Cross-References

Fees of the Sheriff, 7-32-2141.

Mileage and expenses of Sheriff in general, 7-32-2143.

25-35-605. Removal to justice's court — effect of failure to remove. (1) Any action commenced in small claims court may be removed to justice's court by a defendant upon the filing of a notice of removal with the justice within 10 days of the service of the complaint and order. From the time of filing of the notice of removal, the court to which the action is removed has and exercises the same jurisdiction over it as though the action had been originally commenced in such court.

(2) Upon the filing of a notice of removal, the court shall give notice of that fact to all other parties to the action. All rules and statutes governing proceedings originally commenced in justice's court, except rules of pleading but including rules and statutes governing appeals from justice's court, are applicable to proceedings removed to justice's court, except that a plaintiff is not required to replead unless the court so orders, and no fee shall be required of a plaintiff for the filing of a complaint if a fee for filing was paid in small claims court.

(3) Failure to request removal within the time provided in subsection (1) constitutes a waiver by the defendant of his right to a trial by jury and representation by an attorney, and the justice shall inform the defendant of such fact prior to commencement of the hearing.

History: En. Secs. 17, 18, Ch. 586, L. 1981; amd. Sec. 4, Ch. 492, L. 1983.

25-35-606. Defendant's counterclaim. (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed $2,500. If a counterclaim or setoff is asserted in excess of $2,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged thereby, leaving the defendant to prosecute the balance of his claim in an appropriate justice or district court action.

(3) The counterclaim shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF
.... COUNTY, MONTANA
BEFORE ...., JUSTICE OF THE PEACE

. . . .
. . . .
Plaintiff
vs.
. . . . Counterclaim Case No. ...
. . . .
Defendant(s)

. . . .

Comes now the defendant, being first duly sworn, upon oath, and alleges that defendant is entitled to counterclaim against the plaintiff in the plaintiff's pending action in the sum of $....., for . . . .
. . . .
. . . .
which sum is now due, together with defendant's costs herein expended.

Dated this ...... day of ...., 19....

. . . .
Defendant

. . . .
Defendant's address

Subscribed and sworn to before me this ..... day of ...., 19....

. . . .
Justice of the peace
By: . . . .
Clerk, small claims division

History: En. Sec. 11, Ch. 586, L. 1981; amd. Sec. 8, Ch. 438, L. 1989.

25-35-607. No further pleadings. No form of pleading other than the complaint, the order of the court/notice to defendant, and the counterclaim of the defendant, if there is one, is allowed.

History: En. Sec. 12, Ch. 586, L. 1981.

25-35-608. Fees. (1) The clerk of the justice's court shall collect a fee of:

(a) $10 from the plaintiff upon the filing of the sworn complaint; and

(b) $5 from the defendant upon his appearance and contesting of the complaint or execution of a counterclaim.

(2) The laws relating to paupers' affidavits apply to actions before the small claims court.

History: En. Sec. 13, Ch. 586, L. 1981; amd. Sec. 2, Ch. 26, L. 1989.

Cross-References

Poor persons not required to prepay fees, 25-10-404.

Part 7

The Trial

25-35-701. Proceedings to be informal. The hearing and disposition of small claims actions shall be informal.

History: En. Sec. 14, Ch. 586, L. 1981.

Cross-References

Small claims division — purpose, 3-10-1001, 25-35-501.

25-35-702. Witnesses — evidence — subpoena power. The plaintiff and the defendant may offer evidence in their behalf by witnesses appearing at such hearing in the same manner as in other cases arising in justice's court or by written evidence, and the judge may direct the production of evidence as he considers appropriate. The small claims court has the subpoena power granted to justices' courts in all civil cases.

History: En. Sec. 15, Ch. 586, L. 1981.

Cross-References

Powers of judicial officers as to conduct of proceedings, 3-1-402.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Evidence — subpoena power, 25-34-303.

Subpoenas and witnesses, Title 26, ch. 2.

25-35-703. Record of proceedings. All civil actions tried in a small claims court shall be recorded either electronically or stenographically.

History: En. Sec. 16, Ch. 586, L. 1981.

Part 8

Judgment — Appeal

25-35-801. Entry of judgment. Upon the conclusion of the case tried to the court, the justice shall make his findings and enter judgment.

History: En. Sec. 19, Ch. 586, L. 1981.

Cross-References

Docket entries, 3-10-1005.

25-35-802. Costs. The prevailing party in an action before the small claims court is entitled to his costs.

History: En. Sec. 20, Ch. 586, L. 1981.

Cross-References

Costs, Title 25, ch. 31, part 10.

25-35-803. Appeal to district court — commencement and scope. (1) If either party is dissatisfied with the judgment of the small claims court, he may appeal to the district court of the county where the judgment was rendered. An appeal shall be commenced by giving written notice to the small claims court and serving a copy of the notice of appeal on the adverse party within 10 days after entry of judgment.

(2) There may not be a trial de novo in the district court. The appeal shall be limited to questions of law.

History: En. Sec. 21, Ch. 586, L. 1981.

Cross-References

Kinds of jurisdiction, 3-5-301.

Appellate jurisdiction, 3-5-303.

Appeals to District Court from Justices' and City Courts, Title 25, ch. 33.

25-35-804. Record on appeal. (1) Within 30 days of the notice, the entire record of the small claims court proceedings shall be transmitted to the district court or the appeal shall be dismissed. It is the duty of the appealing party to perfect the appeal.

(2) When notice of appeal is filed, the justice shall forward the electronic recording or transcript of the stenographic record of the proceedings to the district court, together with the original papers filed, certified by him to be accurate and complete. When the record is transferred to the clerk of the district court, the justice shall notify the parties in writing.

History: En. Sec. 22, Ch. 586, L. 1981.

Cross-References

Papers to be transmitted, 25-33-104.

25-35-805. Use of transcripts or tapes by district court. The district court may hear the recording of the proceedings of the justice's court, but in its discretion it may have parts or all of the recordings transcribed at the cost of the district court. If the proceedings are stenographically taken, the notes will be transcribed in full or in designated parts as stipulated by the parties. The cost of such transcription shall be computed as prescribed by law.

History: En. Sec. 23, Ch. 586, L. 1981.

25-35-806. Attorney's fees upon appeal or removal. (1) If the parties are represented by counsel on appeal, the court may grant the prevailing party his reasonable attorney's fees, in addition to costs.

(2) If a defendant removes a matter to justice's court under the provisions of 25-35-605(1) but does not prevail in justice's court, the court may grant the plaintiff his reasonable attorney's fees, if any.

History: En. Sec. 25, Ch. 586, L. 1981.

25-35-807. Execution of judgment. Proceedings to enforce or collect a judgment are governed by the laws relating to execution upon justice's court judgments.

History: En. Sec. 24, Ch. 586, L. 1981.

Cross-References

Execution of judgment in Justice's Court generally, Title 25, ch. 31, part 11.

TITLE 26

EVIDENCE

Ch.
1. Statutory Provisions on Evidence.
2. Subpoenas and Witnesses.
3. Effect of Former Judgments and Orders.
Chapters 4 through 9 reserved.
10. Montana Rules of Evidence.

CHAPTER 1

STATUTORY PROVISIONS ON EVIDENCE

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Part 1

Definitions and Miscellaneous Provisions

26-1-101. General definitions. (1) "Direct examination" is the first examination of a witness on a particular matter. "Cross-examination" is the examination of a witness by a party other than the direct examiner.

(2) "Evidence" is the means of ascertaining in a judicial proceeding the truth respecting a question of fact, including but not limited to witness testimony, writings, physical objects, or other things presented to the senses.

(3) A "leading question" is a question which suggests to the witness the answer which the examining party desires.

(4) "Proof" is the establishment of a fact by evidence.

(5) A "witness" is a person whose declaration under oath is received as evidence for any purpose, whether such declaration be made on oral examination or by deposition or affidavit.

History: (1)En. Sec. 3373, C. Civ. Proc. 1895; re-en. Sec. 8018, Rev. C. 1907; re-en. Sec. 10662, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2045; re-en. Sec. 10662, R.C.M. 1935; Sec. 93-1901-4, R.C.M. 1947; (2)En. Sec. 3100, C. Civ. Proc. 1895; re-en. Sec. 7844, Rev. C. 1907; re-en. Sec. 10488, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1823; re-en. Sec. 10488, R.C.M. 1935; Sec. 93-301-1, R.C.M. 1947; (3)En. Sec. 3374, C. Civ. Proc. 1895; re-en. Sec. 8019, Rev. C. 1907; re-en. Sec. 10663, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2046; re-en. Sec. 10663, R.C.M. 1935; Sec. 93-1901-5, R.C.M. 1947; (4)En. Sec. 3101, C. Civ. Proc. 1895; re-en. Sec. 7845, Rev. C. 1907; re-en. Sec. 10489, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1824; re-en. Sec. 10489, R.C.M. 1935; Sec. 93-301-2, R.C.M. 1947; (5)En. Sec. 3160, C. Civ. Proc. 1895; re-en. Sec. 7889, Rev. C. 1907; re-en. Sec. 10533, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1878; re-en. Sec. 10533, R.C.M. 1935; Sec. 93-701-1, R.C.M. 1947; R.C.M. 1947, 93-301-1, 93-301-2, 93-701-1, 93-1901-4, 93-1901-5; amd. Sec. 1, Ch. 72, L. 1983.

Cross-References

Oaths — form, 1-6-102.

Order of trial, 25-7-301.

Depositions, Rule 26, M.R.Civ.P. (see Title 25, ch. 20).

Scope of examination and cross-examination, Rule 43(b), M.R.Civ.P. (see Title 25, ch. 20); Rule 611, M.R.Ev. (see Title 26, ch. 10).

Affidavits, Title 26, ch. 1, part 10.

Mode of interrogation, Rule 611, M.R.Ev. (see Title 26, ch. 10).

Witness defined — criminal proceedings, 45-2-101.

26-1-102. Definitions — kinds of evidence. (1) "Circumstantial evidence" is that which tends to establish a fact by proving another and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence.

(2) (a) "Conclusive evidence" is that which the law does not permit to be contradicted.

(b) No evidence is by law made conclusive unless so declared by statute.

(3) "Corroborative evidence" is additional evidence of a different character to the same point.

(4) "Cumulative evidence" is additional evidence of the same character to the same point.

(5) "Direct evidence" is that which proves a fact without an inference or presumption and which in itself, if true, establishes that fact.

(6) "Prima facie evidence" is that which proves a particular fact until contradicted and overcome by other evidence.

History: (1)(a)En. Sec. 3114, C. Civ. Proc. 1895; re-en. Sec. 7858, Rev. C. 1907; re-en. Sec. 10502, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1837; re-en. Sec. 10502, R.C.M. 1935; Sec. 93-301-15, R.C.M. 1947; (1)(b)En. Sec. 3280, C. Civ. Proc. 1895; re-en. Sec. 7971, Rev. C. 1907; re-en. Sec. 10615, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1978; re-en. Sec. 10615, R.C.M. 1935; Sec. 93-1401-9, R.C.M. 1947; (2)En. Sec. 3115, C. Civ. Proc. 1895; re-en. Sec. 7859, Rev. C. 1907; re-en. Sec. 10503, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1838; re-en. Sec. 10503, R.C.M. 1935; Sec. 93-301-16, R.C.M. 1947; (3)En. Sec. 3108, C. Civ. Proc. 1895; re-en. Sec. 7852, Rev. C. 1907; re-en. Sec. 10496, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1831; re-en. Sec. 10496, R.C.M. 1935; Sec. 93-301-9, R.C.M. 1947; (4)(a)En. Sec. 3109, C. Civ. Proc. 1895; re-en. Sec. 7853, Rev. C. 1907; re-en. Sec. 10497, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1832; re-en. Sec. 10497, R.C.M. 1935; Sec. 93-301-10, R.C.M. 1947; (4)(b)En. Sec. 3260, C. Civ. Proc. 1895; re-en. Sec. 7956, Rev. C. 1907; re-en. Sec. 10600, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1957; re-en. Sec. 10600, R.C.M. 1935; Sec. 93-1301-1, R.C.M. 1947; (5)En. Sec. 3110, C. Civ. Proc. 1895; re-en. Sec. 7854, Rev. C. 1907; re-en. Sec. 10498, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1833; re-en. Sec. 10498, R.C.M. 1935; Sec. 93-301-11, R.C.M. 1947; R.C.M. 1947, 93-301-9, 93-301-10, 93-301-11, 93-301-15, 93-301-16, 93-1301-1, 93-1401-9; amd. Sec. 2, Ch. 72, L. 1983.

Cross-References

Inference defined, 26-1-501.

Presumptions, Title 26, ch. 1, part 6.

Effect of former judgments and orders, Title 26, ch. 3.

Exclusion of relevant evidence on grounds of waste of time, Rule 403, M.R.Ev. (see Title 26, ch. 10).

Prima facie evidence — self-authenticating documents, Rule 902, M.R.Ev. (see Title 26, ch. 10); Table "E" (see compiler's comment, Rule 902, M.R.Ev., see Title 26, ch. 10).

Prima facie evidence by third-party documents, 30-1-202.

26-1-103. Declaration, act, or omission which is a part of the transaction. Where the declaration, act, or omission forms part of a transaction which is itself the fact in dispute or evidence of that fact, such declaration, act, or omission is evidence as part of the transaction.

History: En. Sec. 604, p. 196, L. 1877; re-en. Sec. 604, 1st Div. Rev. Stat. 1879; re-en. Sec. 622, 1st Div. Comp. Stat. 1887; re-en. Sec. 3126, C. Civ. Proc. 1895; re-en. Sec. 7867, Rev. C. 1907; re-en. Sec. 10511, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1850; re-en. Sec. 10511, R.C.M. 1935; R.C.M. 1947, 93-401-7.

Cross-References

Definition of hearsay evidence, Rule 801, M.R.Ev. (see Title 26, ch. 10).

Res gestae, Rules 801 and 803, M.R.Ev. (see Title 26, ch. 10).

Hearsay exceptions — similar to transaction rule, Rule 803(1) through (3), M.R.Ev. (see Title 26, ch. 10).

Course of dealing and usage of trade, 30-1-205.

26-1-104. Evidence of third person's obligation. Where the question in dispute between the parties is the obligation or duty of a third person, whatever would be the evidence for or against such person is prima facie evidence between the parties.

History: En. Sec. 605, p. 197, L. 1877; re-en. Sec. 605, 1st Div. Rev. Stat. 1879; re-en. Sec. 623, 1st Div. Comp. Stat. 1887; re-en. Sec. 3127, C. Civ. Proc. 1895; re-en. Sec. 7868, Rev. C. 1907; re-en. Sec. 10512, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1851; re-en. Sec. 10512, R.C.M. 1935; R.C.M. 1947, 93-401-8.

Cross-References

Obligations in general, Title 28, ch. 1.

Course of dealing and usage of trade, 30-1-205.

26-1-105. Superseded. Sup. Ct. Ord. No. 12729, July 10, 1979. (See compiler's comments in annotations under Title 26, ch. 10, Mont. Rules of Evidence.)

History: En. Sec. 624, p. 201, L. 1877; re-en. Sec. 624, 1st Div. Rev. Stat. 1879; re-en. Sec. 642, 1st Div. Comp. Stat. 1887; re-en. Sec. 3146, C. Civ. Proc. 1895; re-en. Sec. 7887, Rev. C. 1907; re-en. Sec. 10531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1870; re-en. Sec. 10531, R.C.M. 1935; R.C.M. 1947, 93-401-27(part)(10).

26-1-106. Explanation of alterations in a writing. The party producing a writing as genuine which has been altered or appears to have been altered after its execution in a part material to the question in dispute must account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, was made with the consent of the parties affected by it, or was otherwise properly or innocently made or that the alteration did not change the meaning or language of the instrument. If he does that, he may give the writing in evidence, but not otherwise.

History: En. Sec. 365, p. 119, Bannack Stat.; re-en. Sec. 423, p. 221, L. 1867; re-en. Sec. 497, p. 136, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 12, p. 12, L. 1881; re-en. Sec. 644, 1st Div. Comp. Stat. 1887; amd. Sec. 3291, C. Civ. Proc. 1895; re-en. Sec. 7973, Rev. C. 1907; re-en. Sec. 10617, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1982; re-en. Sec. 10617, R.C.M. 1935; R.C.M. 1947, 93-1501-2.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

How written contract may be altered by parties, 28-2-1602.

Final written expression — parol or extrinsic evidence, 30-2-202.

26-1-107. Repealed. Sec. 20, Ch. 72, L. 1983.

History: En. Sec. 3233, C. Civ. Proc. 1895; re-en. Sec. 7946, Rev. C. 1907; re-en. Sec. 10590, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1942; re-en. Sec. 10590, R.C.M. 1935; R.C.M. 1947, 93-1101-13.

26-1-108. Repealed. Sec. 20, Ch. 72, L. 1983.

History: En. Sec. 3236, C. Civ. Proc. 1895; re-en. Sec. 7949, Rev. C. 1907; re-en. Sec. 10593, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1945; re-en. Sec. 10593, R.C.M. 1935; R.C.M. 1947, 93-1101-16.

Part 2

Province of Court and Jury

26-1-201. Questions of law. Except as provided in Article II, section 7, of the Montana constitution, all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, must be decided by the court.

History: En. Sec. 3441, C. Civ. Proc. 1895; re-en. Sec. 8055, Rev. C. 1907; re-en. Sec. 10699, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2102; re-en. Sec. 10699, R.C.M. 1935; R.C.M. 1947, 93-2501-2; amd. Sec. 3, Ch. 72, L. 1983.

Cross-References

Criminal actions — similar provision, 25-7-102.

Questions of admissibility of evidence, Rules 101 and 104, M.R.Ev. (see Title 26, ch. 10).

Judicial notice of law — determination of law made by court, Rule 202, M.R.Ev. (see Title 26, ch. 10).

Libel and slander, Title 27, ch. 1, part 8.

Criminal prosecutions — questions of law and fact, 46-16-103.

Criminal defamation — jury to determine law and fact, 46-16-103.

Justices' and City Courts — criminal actions, 46-17-201.

26-1-202. Questions of fact. If a trial is by jury, all questions of fact other than those mentioned in 26-1-201 must be decided by the jury, and all evidence thereon must be addressed to them, except as otherwise provided by law. If the trial of a question of fact is not by jury, all evidence thereon must be addressed to the trial court, which shall decide such question.

History: En. Sec. 3440, C. Civ. Proc. 1895; re-en. Sec. 8054, Rev. C. 1907; re-en. Sec. 10698, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2101; re-en. Sec. 10698, R.C.M. 1935; R.C.M. 1947, 93-2501-1; amd. Sec. 4, Ch. 72, L. 1983.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Jury — definition and duty, 3-15-101.

Jury to decide fact — evidence addressed to them, 25-7-103.

No issues of fact — directed verdict, 25-7-302.

Waiver of findings of fact, 25-7-601.

Trial upon agreed statement of facts, 25-7-602.

Criminal prosecutions — questions of law and fact, 46-16-103.

Justices' and City Courts — criminal actions, 46-17-201.

26-1-203. Who to judge effect and value of evidence. The jury, subject to the control of the court, is the judge of the effect and value of evidence addressed to it, except when the evidence is declared to be conclusive. The court is the judge of the effect and value of evidence addressed to it.

History: En. Sec. 3390, C. Civ. Proc. 1895; re-en. Sec. 8028, Rev. C. 1907; re-en. Sec. 10672, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2061; re-en. Sec. 10672, R.C.M. 1935; R.C.M. 1947, 93-2001-1(part); amd. Sec. 5, Ch. 72, L. 1983.

Cross-References

Evidence addressed to jury, 25-7-103.

No issues of fact — directed verdict, 25-7-302.

Part 3
Weight and Effect of Evidence

26-1-301. One witness sufficient to prove a fact. The direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact, except perjury and treason.

History: En. Sec. 598, p. 195, L. 1877; re-en. Sec. 598, 1st Div. Rev. Stat. 1879; re-en. Sec. 616, 1st Div. Comp. Stat. 1887; re-en. Sec. 3120, C. Civ. Proc. 1895; re-en. Sec. 7861, Rev. C. 1907; re-en. Sec. 10505, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1844; re-en. Sec. 10505, R.C.M. 1935; R.C.M. 1947, 93-401-1.

Cross-References

Competency of witnesses, Rule 601, M.R.Ev. (see Title 26, ch. 10).

Perjury — evidence required, 45-7-201.

Treason — evidence required, 46-16-202.

26-1-302. Witness presumed to speak the truth — how presumption rebutted. A witness is presumed to speak the truth. The jury or the court in the absence of a jury is the exclusive judge of his credibility. This presumption may be controverted and overcome by any matter that has a tendency to disprove the truthfulness of a witness' testimony; such matters include but are not limited to:

(1) the demeanor or manner of the witness while testifying;

(2) the character of the witness' testimony;

(3) bias of the witness for or against any party involved in the case;

(4) interest of the witness in the outcome of the litigation or other motive to testify falsely;

(5) the witness' character for truth, honesty, or integrity;

(6) the extent of the witness' capacity and opportunity to perceive or capacity to recollect or to communicate any matter about which he testifies;

(7) inconsistent statements of the witness;

(8) an admission of untruthfulness by the witness;

(9) other evidence contradicting the witness' testimony.

History: En. Sec. 601, p. 195, L. 1877; re-en. Sec. 601, 1st Div. Rev. Stat. 1879; re-en. Sec. 619, 1st Div. Comp. Stat. 1887; re-en. Sec. 3123, C. Civ. Proc. 1895; re-en. Sec. 7864, Rev. C. 1907; re-en. Sec. 10508, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1847; re-en. Sec. 10508, R.C.M. 1935; R.C.M. 1947, 93-401-4; amd. Sec. 6, Ch. 72, L. 1983.

Cross-References

Evidence of character and conduct of a witness, Rule 608, M.R.Ev. (see Title 26, ch. 10).

Perjury, 45-7-201.

26-1-303. Instructions to jury on how to evaluate evidence. The jury is to be instructed by the court on all proper occasions that:

(1) their power of judging the effect of evidence is not arbitrary but to be exercised with legal discretion and in subordination to the rules of evidence;

(2) they are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in their minds, against

a less number or against a presumption or other evidence satisfying their minds;

(3) a witness false in one part of his testimony is to be distrusted in others;

(4) the testimony of a person legally accountable for the acts of the accused ought to be viewed with distrust;

(5) if weaker and less satisfactory evidence is offered and it appears that it is within the power of the party to offer stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

History: En. Sec. 3390, C. Civ. Proc. 1895; re-en. Sec. 8028, Rev. C. 1907; re-en. Sec. 10672, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2061; re-en. Sec. 10672, R.C.M. 1935; R.C.M. 1947, 93-2001-1(part)(1) thru (4), (6), (7); amd. Sec. 7, Ch. 72, L. 1983.

Cross-References

Instructions to jury — civil procedure, Rule 51, M.R.Civ.P. (see Title 25, ch. 20).

Presumption regarding weaker, less satisfactory evidence, 26-1-602.

Exemplary or punitive damages — restrictions on instructing jury, 27-1-221.

Person legally accountable for conduct of another, 45-2-302.

Testimony of person legally accountable, 46-16-213.

Instructions to jury — criminal actions, 46-16-401.

Part 4
Burdens of Proof

26-1-401. Who has the burden of producing evidence. The initial burden of producing evidence as to a particular fact is on the party who would be defeated if no evidence were given on either side. Thereafter, the burden of producing evidence is on the party who would suffer a finding against him in the absence of further evidence.

History: En. Sec. 3290, C. Civ. Proc. 1895; re-en. Sec. 7972, Rev. C. 1907; re-en. Sec. 10616, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1981; re-en. Sec. 10616, R.C.M. 1935; R.C.M. 1947, 93-1501-1; amd. Sec. 8, Ch. 72, L. 1983.

Cross-References

Pleading generally, Rule 8, M.R.Civ.P. (see Title 25, ch. 20).

Awarding exemplary or punitive damages — special burden of proof, 27-1-221.

Homicide trial — burden of state, 45-5-111, 45-5-112.

26-1-402. Who has the burden of persuasion. Except as otherwise provided by law, a party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim for relief or defense he is asserting.

History: En. Sec. 623, p. 201, L. 1877; re-en. Sec. 623, 1st Div. Rev. Stat. 1879; re-en. Sec. 641, 1st Div. Comp. Stat. 1887; re-en. Sec. 3145, C. Civ. Proc. 1895; re-en. Sec. 7886, Rev. C. 1907; re-en. Sec. 10530, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1869; re-en. Sec. 10530, R.C.M. 1935; R.C.M. 1947, 93-401-26; amd. Sec. 9, Ch. 72, L. 1983.

Cross-References

Pleading — affirmative allegations, Rule 8, M.R.Civ.P. (see Title 25, ch. 20).

Production of documents, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

26-1-403. Instructions to jury on standard of proof required to meet burden of persuasion. The jury is to be instructed by the court on all proper occasions:

(1) that in civil cases the affirmative of the issue must be proved, and when the evidence is contradictory, the decision must be made according to the preponderance of the evidence; and

(2) that in criminal cases guilt must be established beyond reasonable doubt.

History: En. Sec. 3390, C. Civ. Proc. 1895; re-en. Sec. 8028, Rev. C. 1907; re-en. Sec. 10672, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2061; re-en. Sec. 10672, R.C.M. 1935; R.C.M. 1947, 93-2001-1(part).

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Awarding exemplary or punitive damages — special burden of proof, 27-1-221.

Criminal defendants — presumption of innocence — reasonable doubt of guilt, 46-16-204.

Part 5
Inferences

Part Cross-References

Conduct of jury after case submitted to it, 25-7-403.

26-1-501. Inference defined. An "inference" is a deduction which the trier of fact may make from the evidence.

History: En. Sec. 3261, C. Civ. Proc. 1895; re-en. Sec. 7957, Rev. C. 1907; re-en. Sec. 10601, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1958; re-en. Sec. 10601, R.C.M. 1935; R.C.M. 1947, 93-1301-2; amd. Sec. 10, Ch. 72, L. 1983.

26-1-502. When an inference arises. An inference must be founded:

(1) on a fact legally proved; and

(2) on such a deduction from that fact as is warranted by a consideration of the usual propensities or passions of men, the particular propensities or passions of the person whose act is in question, the course of business, or the course of nature.

History: En. Sec. 3263, C. Civ. Proc. 1895; re-en. Sec. 7959, Rev. C. 1907; re-en. Sec. 10603, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1960; re-en. Sec. 10603, R.C.M. 1935; R.C.M. 1947, 93-1301-4.

Cross-References

When issues of fact to be decided by jury, 25-7-103.

Conduct of jury after case submitted to it, 25-7-403.

Part 6
Presumptions

26-1-601. List of conclusive presumptions. The following presumptions are conclusive:

(1) the truth of a declaration, act, or omission of a party, as against that party in any litigation arising out of such declaration, act, or omission, whenever he has, by such declaration, act, or omission, intentionally led another to believe a particular thing true and to act upon such belief;

(2) that a tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation;

(3) the judgment or order of a court, which is declared by statute to be conclusive;

(4) any other presumption which, by statute, is expressly made conclusive.

History: En. Sec. 3265, C. Civ. Proc. 1895; re-en. Sec. 7961, Rev. C. 1907; re-en. Sec. 10605, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1962; re-en. Sec. 10605, R.C.M. 1935; R.C.M. 1947, 93-1301-6; amd. Sec. 11, Ch. 72, L. 1983.

Cross-References

Own wrong — no advantage, 1-3-208.

Judgment — pleading, Rule 9, M.R.Civ.P. (see Title 25, ch. 20).

List of statutory conclusive presumptions, see Part I, Table D, in compiler's comment, Title 26, ch. 1, part 6.

Effect of former judgments and orders, Title 26, ch. 3.

Conclusive judgments, 26-3-201.

Judicially noticed facts — as conclusive — civil actions, Rule 201, M.R.Ev. (see Title 26, ch. 10).

Presumptions — definition and evidentiary effect, Rule 301, M.R.Ev. (see Title 26, ch. 10).

Consideration, Title 28, ch. 2, part 8.

Legitimacy of children born in wedlock, 40-6-201.

Criminal intent — "knowingly" and "purposely", 45-2-101.

Adverse possession — relation of landlord and tenant, 70-19-412.

26-1-602. Disputable presumptions. All other presumptions are "disputable presumptions" and may be controverted by other evidence. The following are of that kind:

(1) A person is innocent of crime or wrong.

(2) An unlawful act was done with an unlawful intent.

(3) A person intends the ordinary consequence of his voluntary act.

(4) A person takes ordinary care of his own concerns.

(5) Evidence willfully suppressed would be adverse if produced.

(6) More satisfactory evidence would be adverse if weaker and less satisfactory evidence is offered and it is within the power of the party to offer more satisfactory evidence.

(7) Money paid by one to another was due the latter.

(8) A thing delivered by one to another belonged to the latter.

(9) When the instrument evidencing an obligation has been delivered to the debtor, the obligation has been paid.

(10) Prior rent or installments have been paid when a receipt for later rent or installments is produced.

(11) Things which a person possesses are owned by him.

(12) A person is the owner of property if he exercises acts of ownership over it or there is common reputation of his ownership.

(13) A person in possession of an order on himself for the payment of money or the delivery of a thing has paid the money or delivered the thing accordingly.

(14) A person acting in a public office was regularly appointed to it.

(15) Official duty has been regularly performed.

(16) A court or judge acting as such, whether in this state or any other state or country, was acting in the lawful exercise of its or his jurisdiction.

(17) A judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties.

(18) All matters within an issue were laid before the jury and passed upon by them, and in like manner, all matters within a submission to arbitration were laid before the arbitrators and passed upon by them.

(19) Private transactions have been fair and regular.

(20) The ordinary course of business has been followed.

(21) A promissory note or bill of exchange was given or endorsed for a sufficient consideration.

(22) An endorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill.

(23) A writing is truly dated.

(24) A letter duly directed and mailed was received in the regular course of the mail.

(25) There is an identity of persons when there is an identity of names.

(26) A person not heard from in 7 years is dead.

(27) Acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact.

(28) Things have happened according to the ordinary course of nature and the ordinary habits of life.

(29) Persons acting as partners have entered into a contract of partnership.

(30) A man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.

(31) A child born in lawful wedlock, there being no divorce from bed and board, is legitimate.

(32) A thing once proved to exist continues as long as is usual with things of that nature.

(33) The law has been obeyed.

(34) A printed and published book purporting to be printed or published by public authority was so printed or published.

(35) A printed and published book purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published contains correct reports of such cases.

(36) A trustee or other person whose duty it was to convey real property to a particular person has actually conveyed to him. This presumption applies when it is necessary to perfect the title of such person or his successor in interest.

(37) When there has been uninterrupted use by the public of land for a burial ground for 5 years, with the consent of the owner and without a reservation of his rights, he intended to dedicate it to the public for that purpose.

(38) There was a good and sufficient consideration for a written contract.

History: En. Sec. 3266, C. Civ. Proc. 1895; re-en. Sec. 7962, Rev. C. 1907; re-en. Sec. 10606, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1963; re-en. Sec. 10606, R.C.M. 1935; amd. Sec. 9, Ch. 20, L. 1951; R.C.M. 1947, 93-1301-7; amd. Sec. 12, Ch. 72, L. 1983.

Cross-References

Presumption that internal references in MCA are to law as it may be amended or changed, 1-2-108.

No presumption of legislative intent drawn from code classification or arrangement, 1-11-103.

MCA — prima facie the official laws of state, 1-11-103.

Adoption of administrative rules — objection by Administrative Code Committee — presumption of agency correctness reversed, 2-4-406.

Offering weaker and less satisfactory evidence — jury instruction, 26-1-303.

List of other statutory and common-law disputable presumptions, see Parts II and III, Table D, in compiler's comment, Title 26, ch. 1, part 6.

Conclusive order or judgment of court, 26-3-201.

Presumptions — definition and evidentiary effect, Rule 301, M.R.Ev. (see Title 26, ch. 10).

Self-authenticating documents or publications, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Consideration, Title 28, ch. 2, part 8.

Partnership — rules for determining existence, 35-10-202.

Common-law marriages, 40-1-403.

Legitimacy of children born in wedlock, 40-6-201.

Presumption of forfeiture — seizures related to controlled substances, 44-12-203.

Presumption of offensive or aggressive purpose, 45-8-305.

Presumption from failure to register machine guns, 45-8-309.

Presumption of innocence, 46-16-204.

Child restraints in motor vehicles — failure to use — no presumption of negligence, 61-9-422.

Delivery of property — grant, 70-1-508.

Evidence of death, 72-1-108.

Presumption of death — period, 72-1-108.

26-1-603. Books containing laws presumed correct. Books printed or published under the authority of a sister state or foreign country and purporting to contain the statutes, code, or other written law of such state or country or proved to be commonly admitted in the tribunals of such state or country as evidence of the written law thereof are admissible in this state as evidence of such law.

History: En. Sec. 370, p. 120, Bannack Stat.; re-en. Sec. 428, p. 221, L. 1867; re-en. Sec. 502, p. 137, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 12, p. 12, L. 1881; re-en. Sec. 646, 1st Div. Comp. Stat. 1887; en. Sec. 3188, C. Civ. Proc. 1895; re-en. Sec. 7906, Rev. C. 1907; re-en. Sec. 10550, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1900; re-en. Sec. 10550, R.C.M. 1935; R.C.M. 1947, 93-1001-12.

Cross-References

Determination of foreign law, Rule 44.1, M.R.Civ.P. (see Title 25, ch. 20).

Judicial notice of law, Rule 202, M.R.Ev. (see Title 26, ch. 10).

Self-authenticating documents or publications, Rule 902, M.R.Ev. (see Title 26, ch. 10).

26-1-604. When recitals in statutes conclusive. The recitals in a public statute are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

History: En. Sec. 3191, C. Civ. Proc. 1895; re-en. Sec. 7909, Rev. C. 1907; re-en. Sec. 10553, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1903; re-en. Sec. 10553, R.C.M. 1935; R.C.M. 1947, 93-1001-15.

Cross-References

Public and private statutes, 1-1-106.

26-1-605. Entries in official books and records prima facie evidence. Entries in public or other official books or records made in the performance of his duty by a public officer of this state or any other person in the performance of a duty specially enjoined by law are prima facie evidence of the facts stated therein.

History: En. Sec. 3208, C. Civ. Proc. 1895; re-en. Sec. 7926, Rev. C. 1907; re-en. Sec. 10570, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1920; re-en. Sec. 10570, R.C.M. 1935; R.C.M. 1947, 93-1001-32.

Cross-References

Public records generally, Title 2, ch. 6.

Reproduction of records — Secretary of State — evidentiary effect, 2-6-111.

County records — substitution by reproduction, 7-4-2222.

Role and duties of County Clerk, 7-4-2611.

Municipal clerk, Title 7, ch. 4, part 45.

Proof of official record, Rule 44, M.R.Civ.P. (see Title 25, ch. 20).

26-1-606. Entry made by officer or board prima facie evidence. An entry made by an officer or board of officers or under the direction and in the presence of either, in the course of official duty, is prima facie evidence of the facts stated in such entry.

History: En. Sec. 3214, C. Civ. Proc. 1895; re-en. Sec. 7932, Rev. C. 1907; re-en. Sec. 10576, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1926; re-en. Sec. 10576, R.C.M. 1935; R.C.M. 1947, 93-1001-38.

Cross-References

Public records, Title 2, ch. 6.

Duties of Secretary of State — public records, 2-6-111.

Duties of County Clerk, 7-4-2611.

Municipal clerk, Title 7, ch. 4, part 45.

26-1-607. When writings of a decedent prima facie evidence. The entries and other writings of a decedent, made at or near the time of the transaction and when the decedent was in a position to know the facts stated therein, are prima facie evidence of the facts stated therein, in the following cases:

(1) when the writing or entry was made against the interest of the person making it;

(2) when it was made in a professional capacity and in the ordinary course of professional conduct;

(3) when it was made in the performance of a duty specially enjoined by law.

History: En. Sec. 3237, C. Civ. Proc. 1895; re-en. Sec. 7950, Rev. C. 1907; re-en. Sec. 10594, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1946; re-en. Sec. 10594, R.C.M. 1935; R.C.M. 1947, 93-1101-17; amd. Sec. 13, Ch. 72, L. 1983.

26-1-608. Photographs of items allegedly taken or converted — admissibility procedure. (1) In a prosecution for a violation of 45-6-301, photographs of the items alleged to have been taken or converted are competent evidence of the items and are admissible in a proceeding, hearing, or trial as if the items themselves were introduced as evidence so long as responding law enforcement personnel have designated a person to be responsible for properly photographing the items and preserving the photographic evidence.

(2) The photographs must bear a written description of the items alleged to have been taken or converted, the name of the owner from whom the items were allegedly taken or the store or establishment, as appropriate, where the alleged offense occurred, the name of the accused, the name of the arresting officer, the date the photographs were taken, and a statement by the photographer that the photographs accurately represent the items in question.

(3) The writing required under subsection (2) must be made under oath by the arresting officer, and the photographs must be identified by the signature of the photographer. Upon the filing of the photograph and the writing with the law enforcement agency or court holding the items as evidence, the items must be returned to their owner or the proprietor or manager of the store or establishment.

History: En. Sec. 3, Ch. 739, L. 1991.

26-1-609 through 26-1-620 reserved.

26-1-621. Repealed. Sec. 20, Ch. 72, L. 1983.

History: En. Sec. 1, Ch. 14, L. 1947; R.C.M. 1947, 93-1001-39.

26-1-622. Official reports and records made pursuant to federal law prima facie evidence. An official written report or record, or duly certified copy thereof, that a person is dead or alive; missing; missing in action; interned in a neutral country; or beleaguered, besieged, or captured by an enemy, made by any officer or employee of the United States authorized by law of the United States to make same, shall be received in any court, office, or other place in this state as prima facie evidence that such person is dead or alive; missing; missing in action; interned in a neutral country; or beleaguered, besieged, or captured by an enemy, as the case may be.

History: En. Sec. 2, Ch. 14, L. 1947; R.C.M. 1947, 93-1001-40; amd. Sec. 14, Ch. 72, L. 1983.

Cross-References

Charges for tuition — waivers, 20-25-421.

Uniform Probate Code — evidence of death, 72-1-108.

26-1-623. Presumption of authenticity of finding, report, or record. For the purposes of 26-1-622, any finding, report, or record or duly certified copy thereof purporting to have been signed by such an officer or employee of the United States as is described in that section shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify.

History: En. Sec. 3, Ch. 14, L. 1947; R.C.M. 1947, 93-1001-41; amd. Sec. 15, Ch. 72, L. 1983.

Cross-References

Authentication and identification, Art. IX, M.R. Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R. Ev. (see Title 26, ch. 10).

Uniform Probate Code — evidence of death, 72-1-108.

Part 7

Voluntary Payment of Claims

Part Cross-References

Offers of judgment — not admissible:

District Court, Rule 68, M.R.Civ.P. (see Title 25, ch. 20).

Municipal Court, 25-30-101.

Compromise and offers to compromise — not admissible, Rule 408, M.R.Ev. (see Title 26, ch. 10).

Agreements settling or compromising abolished causes of action, 27-1-605.

Liability, Title 27, ch. 1, part 7.

26-1-701. Legislative policy. The legislature hereby declares that the health, welfare, and safety of the people of the state of Montana would be enhanced by the expeditious handling of liability claims. The legislature further declares that the handling of such claims would be expedited if voluntary payment by or on behalf of one person to or on behalf of a person who has sustained injury to his person or damage to his property could not be construed as an admission of fault or liability as to any claim arising out of the occurrence which gave rise to such injury or damage.

History: En. Sec. 1, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-7.

26-1-702. Person defined. As used in this part, the word "person" includes any individual, partnership, joint venture, unincorporated association, private or municipal corporation, the state and its political subdivisions.

History: En. Sec. 2, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-8.

26-1-703. Voluntary partial payment of claim not an admission of fault or waiver. No voluntary partial payment of a claim against any person based on alleged liability of that person for injury to person, including death, or damage to property arising out of any occurrence shall be construed as an admission of fault or liability or as a waiver or release of claim by the person to whom or in whose behalf such payment was made. No voluntary partial payment shall be construed to reduce the amount of damages which may be pleaded or proved in any action arising out of such occurrence.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

Cross-References

Compromise negotiations — not admissible as to liability, Rule 408, M.R.Ev. (see Title 26, ch. 10).

Payment of injury expenses — not admissible as to liability, Rule 409, M.R.Ev. (see Title 26, ch. 10).

26-1-704. Fact of payment and amount inadmissible as evidence. The fact of any such voluntary payment or its amount shall not be admissible as evidence on the trial of any action arising out of such occurrence, whether on the issue of liability, the extent of the damage, or otherwise.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

Cross-References

Compromise negotiations not admissible as to liability, Rule 408, M.R.Ev. (see Title 26, ch. 10).

Payment of injury expenses not admissible as to liability, Rule 409, M.R.Ev. (see Title 26, ch. 10).

26-1-705. Effect of payment upon final settlement. Upon final settlement between the parties of a claim arising out of such occurrence, the parties may make any agreement they wish with respect to all voluntary partial payments.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

26-1-706. Effect of payment on judgment. After entry of a judgment in an action for damages for personal injuries, including death, or for damage to property arising out of any occurrence, any voluntary partial payment theretofore made shall be treated as a credit against such judgment and shall be deductible from the amount of such judgment. If after partial voluntary payments are made as herein provided for, it shall be determined by a court of competent jurisdiction that the person who made such payments or on whose behalf such payments were made is liable for an amount which is less than the amount of the voluntary payments already made, such person shall have no right of action for the recovery of the amount by which the voluntary payments exceeded the amount of the judgment.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

Cross-References

Judgment, Title 25, ch. 9.

Execution of judgment, Title 25, ch. 13.

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Part 8
Privileges

Part Cross-References

Applicability of Montana Rules of Evidence, Art. V, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Waiver of privilege, Rule 503, M.R.Ev. (see Title 26, ch. 10).

Gunshot or stab wounds — reporting by health care practitioners, 37-2-302.

Licensed social workers — privilege, 37-22-401.

Public accountants — privilege, 37-50-402.

Examination and treatment of a child — dependent and neglect proceedings — reports — attorney-client only privilege, 41-3-204, 41-3-404.

Investigative subpoenas — privileges apply, 46-4-305.

Criminal actions — privilege extends to discovery, 46-15-332.

Deaf — interpreter privilege, 49-4-511.

Admissibility of evidence contained in report under Montana Elder Abuse Prevention Act, 52-3-821.

26-1-801. Policy to protect confidentiality in certain relations. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the cases enumerated in this part.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(part).

Cross-References

Privileges recognized only as provided, Rule 501, M.R.Ev. (see Title 26, ch. 10).

26-1-802. Spousal privilege. A husband cannot be examined for or against his wife without her consent or a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other or to a criminal action or proceeding for a crime committed by one against the other.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(1).

Cross-References

Marriage, Title 40, ch. 1.

Right of person to sue spouse for intentional tort, 40-2-109.

Child dependent and neglect proceedings — no privilege, 41-3-404.

Spousal exclusions applicable to sexual crimes, 45-5-511.

Promoting prostitution — testimony of spouse, 45-5-604.

Crime against spouse or children — no privilege, 46-16-212.

26-1-803. Attorney-client privilege. (1) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given to the client in the course of professional employment.

(2) A client cannot, except voluntarily, be examined as to any communication made by him to his attorney or the advice given to him by his attorney in the course of the attorney's professional employment.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(2); amd. Sec. 1, Ch. 276, L. 1989.

Cross-References

Supreme Court — authority over conduct of bar, Art. VII, sec. 2, Mont. Const.

Attorneys — generally, Title 37, ch. 61.

Delinquent youth — privilege, 41-5-402.

26-1-804. Confessions made to member of clergy. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(3).

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

26-1-805. Doctor-patient privilege. Except as provided in Rule 35, Montana Rules of Civil Procedure, a licensed physician, surgeon, or dentist cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(4); amd. Sec. 16, Ch. 72, L. 1983; amd. Sec. 1, Ch. 400, L. 1987.

Cross-References

Civil procedure — physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Diagnosis of condition which impairs patient's ability to safely operate motor vehicle — report to Department of Justice — limits on admissibility of report, 37-2-311.

Physicians — generally, Title 37, ch. 3.

Dentists — generally, Title 37, ch. 4.

Artificial insemination — confidential, 40-6-106.

Treatment of minor — disclosure to spouse or parents not violative of privilege, 41-1-403.

Examination and treatment of child — dependency and neglect — no privilege, 41-3-404.

In-hospital medical staff committees — extension of privilege, 50-16-203.

Confidentiality of health care information, Title 50, ch. 16, part 5.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

26-1-806. Speech-language pathologist, audiologist-client privilege. A speech-language pathologist or audiologist cannot, without the consent of his client, be examined in a civil action as to any communication made by the client to him.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(8); amd. Sec. 6, Ch. 413, L. 1989.

Cross-References

Speech-language pathologists and audiologists, Title 37, ch. 15.

Child dependency and neglect proceedings — no privilege, 41-3-404.

26-1-807. Psychologist-client privilege. The confidential relations and communications between a psychologist and his client shall be placed on the same basis as provided by law for those between an attorney and his client. Nothing in any act of the legislature shall be construed to require such privileged communications to be disclosed.

History: En. Sec. 12, Ch. 73, L. 1971; R.C.M. 1947, 66-3212.

Cross-References

Civil procedure — mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Psychologists, Title 37, ch. 17.

Child — dependency and neglect proceedings — no privilege, 41-3-404.

Psychiatric testimony — criminal actions — issue of mental disease or defect, 46-14-213.

Psychiatric examination for criminal actions — admissibility, 46-14-217.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

26-1-808. Information gathered by psychology teachers and observers. Any person who is engaged in teaching psychology in any school or who, acting as such, is engaged in the study and observation of child mentality shall not, without the consent of the parent or guardian of such child being so taught or observed, testify in any civil action as to any information so obtained.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(6).

Cross-References

Parent and child, Title 40, ch. 6.

26-1-809. Confidential communications by student to employee of educational institution. A counselor, psychologist, nurse, or teacher employed by any educational institution cannot be examined as to communications made to him in confidence by a duly registered student of such institution. However, this provision shall not apply where consent has been given by the student, if not a minor, or, if he is a minor, by the student and his parent or legal guardian.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(7).

Cross-References

Application of privileges — child abuse, neglect, and dependency, 41-3-204, 41-3-404.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

26-1-810. Confidential communications made to public officer. A public officer cannot be examined as to communications made to him in official confidence when the public interests would suffer by the disclosure.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(5).

Cross-References

Offenses against public administration, Title 45, ch. 7.

26-1-811. Mediator privilege. Except as otherwise provided by law, a person acting as a mediator in a family law mediation cannot, without the consent of the parties to the mediation, be examined in a civil action as to any communication made by a party to him during the course of the mediation.

History: En. Sec. 1, Ch. 364, L. 1987.

Part 9

Media Confidentiality Act

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

26-1-901. Short title. This part shall be known and may be cited as the "Media Confidentiality Act".

History: En. Sec. 1, Ch. 195, L. 1943; R.C.M. 1947, 93-601-1; amd. Sec. 1, Ch. 285, L. 1979.

26-1-902. Extent of privilege. (1) Without his or its consent no person, including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news may be examined as to or may be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of his employment or its business.

(2) A person described in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of his or its business.

History: En. Sec. 2, Ch. 195, L. 1943; amd. Sec. 1, Ch. 56, L. 1951; amd. Sec. 1, Ch. 225, L. 1977; R.C.M. 1947, 93-601-2(1), (2); amd. Sec. 2, Ch. 285, L. 1979.

Cross-References

Contempt of court, Title 3, ch. 1, part 5.

Contempt of Legislature, 5-5-103.

26-1-903. Waiver of privilege. (1) Except as provided in subsection (2), dissemination in whole or in part does not constitute a waiver of provisions of 26-1-902.

(2) If the person claiming the privilege testifies, with or without having been subpoenaed or ordered to testify or produce the source, before a judicial, legislative, administrative, or other body having the power to issue subpoenas or judicially enforceable orders, he does not waive the provisions of 26-1-902 unless the person voluntarily agrees to waive the privilege or voluntarily discloses the source in the course of his testimony. Except as provided in this subsection, the provisions of 26-1-902 may not be waived.

History: En. Sec. 2, Ch. 195, L. 1943; amd. Sec. 1, Ch. 56, L. 1951; amd. Sec. 1, Ch. 225, L. 1977; R.C.M. 1947, 93-601-2(3), (4); amd. Sec. 3, Ch. 285, L. 1979; amd. Sec. 1, Ch. 544, L. 1989.

Cross-References

Administrative subpoenas, 2-4-611.

Legislative subpoenas, 5-5-101.

Subpoenas — generally, Title 26, ch. 2, part 1.

Waiver of privilege by voluntary disclosure, Rule 503, M.R.Ev. (see Title 26, ch. 10).

Investigative subpoenas, Title 46, ch. 4, part 3.

Part 10
Affidavits

26-1-1001. Affidavit defined. An "affidavit" is a written declaration under oath, made without notice to the adverse party.

History: En. Sec. 3321, C. Civ. Proc. 1895; re-en. Sec. 7988, Rev. C. 1907; re-en. Sec. 10632, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2003; re-en. Sec. 10632, R.C.M. 1935; R.C.M. 1947, 93-1601-2.

Cross-References

Oaths, Title 1, ch. 6, part 1.

26-1-1002. Permissible uses for affidavits. An affidavit may be used:

(1) to verify a pleading or a paper in a special proceeding;

(2) to prove the service of a summons, notice, or other paper in an action or special proceeding;

(3) to obtain a provisional remedy, the examination of a witness, or a stay of proceedings;

(4) upon a motion; and

(5) in any other case expressly permitted by some other provision of this code.

History: En. Sec. 3330, C. Civ. Proc. 1895; re-en. Sec. 7992, Rev. C. 1907; re-en. Sec. 10636, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2009; re-en. Sec. 10636, R.C.M. 1935; R.C.M. 1947, 93-1701-1.

Cross-References

Expected evidence — affidavit supporting, 25-4-501, 25-4-502.

Evidence on motions — required oral testimony, Rule 43(e), M.R.Civ.P. (see Title 25, ch. 20).

Proceedings for summary judgments, Rule 56(e), M.R.Civ.P. (see Title 25, ch. 20).

Summary judgment — costs for affidavits made in bad faith, Rule 56(g), M.R.Civ.P. (see Title 25, ch. 20).

26-1-1003. Affidavits made in this state — before whom taken. An affidavit to be used before any court, judge, or officer of this state may be taken before any judge or clerk of any court or any justice of the peace, county clerk, or notary public in this state.

History: En. Sec. 336, p. 113, Bannack Stat.; re-en. Sec. 399, p. 215, L. 1867; re-en. Sec. 473, p. 130, Cod. Stat. 1871; re-en. Sec. 651, p. 208, L. 1877; re-en. Sec. 651, 1st Div. Rev. Stat. 1879; re-en. Sec. 672, 1st Div. Comp. Stat. 1887; re-en. Sec. 3333, C. Civ. Proc. 1895; re-en. Sec. 7995, Rev. C. 1907; re-en. Sec. 10639, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2012; re-en. Sec. 10639, R.C.M. 1935; R.C.M. 1947, 93-1701-4.

Cross-References

Notaries public, 1-5-416.

Supreme Court Justices, District Court Judges, and Justices of the Peace, 3-1-404.

Court Clerk — generally, Title 7, ch. 4, part 26.

26-1-1004. Affidavits made in another state — before whom taken. An affidavit taken in another state of the United States to be used in this state may be taken before a commissioner appointed by the governor of this state to take affidavits and depositions in such other state, before any notary public in another state, or before any judge or clerk of a court of record having a seal.

History: En. Sec. 337, p. 113, Bannack Stat.; amd. Sec. 400, p. 215, L. 1867; amd. Sec. 474, p. 130, Cod. Stat. 1871; re-en. Sec. 652, p. 208, L. 1877; re-en. Sec. 652, 1st Div. Rev. Stat. 1879; re-en. Sec. 673, 1st Div. Comp. Stat. 1887; amd. Sec. 3334, C. Civ. Proc. 1895; re-en. Sec. 7996, Rev. C. 1907; re-en. Sec. 10640, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2013; re-en. Sec. 10640, R.C.M. 1935; R.C.M. 1947, 93-1701-5.

Cross-References

Seals, Title 1, ch. 4, part 2.

26-1-1005. Affidavits made in foreign country — before whom taken. An affidavit taken in a foreign country to be used in this state may be taken before an ambassador, minister, consul, vice consul, or consular agent of the United States or before any judge of a court of record having a seal in such foreign country.

History: En. Sec. 338, p. 113, Bannack Stat.; amd. Sec. 401, p. 215, L. 1867; amd. Sec. 475, p. 130, Cod. Stat. 1871; re-en. Sec. 653, p. 208, L. 1877; re-en. Sec. 653, 1st Div. Rev. Stat. 1879; re-en. Sec. 674, 1st Div. Comp. Stat. 1887; amd. Sec. 3335, C. Civ. Proc. 1895; re-en. Sec. 7997, Rev. C. 1907; re-en. Sec. 10641, R.C.M. 1921, Cal. C. Civ. Proc. Sec. 2014; re-en. Sec. 10641, R.C.M. 1935; R.C.M. 1947, 93-1701-6.

Cross-References

Acceptance of foreign seals, 1-4-203.

26-1-1006. Verification of affidavit taken out of state. When an affidavit is taken before a judge of a court in another state or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof must be certified by the clerk of the court, under the seal thereof.

History: En. Sec. 339, p. 113, Bannack Stat.; amd. Sec. 402, p. 215, L. 1867; re-en. Sec. 476, p. 130, Cod. Stat. 1871; re-en. Sec. 654, p. 208, L. 1877; re-en. Sec. 654, 1st Div. Rev. Stat. 1879; re-en. Sec. 675, 1st Div. Comp. Stat. 1887; re-en. Sec. 3336, C. Civ. Proc. 1895; re-en. Sec. 7998, Rev. C. 1907; re-en. Sec. 10642, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2015; re-en. Sec. 10642, R.C.M. 1935; R.C.M. 1947, 93-1701-7.

Cross-References

Authentication and identification, Art. IX, M.R. Ev. (see Title 26, ch. 10).

26-1-1007 through 26-1-1010 reserved.

26-1-1011. Affidavit of printer or publisher as evidence of publication. Evidence of the publication of a document or notice required by law or by an order of a court or judge to be published in a newspaper may be given by the affidavit of the printer or publisher of the newspaper or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made.

History: **En. Sec. 13, p. 12, L. 1881; re-en. Sec. 677, 1st Div. Comp. Stat. 1887; re-en. Sec. 3331, C. Civ. Proc. 1895; re-en. Sec. 7993, Rev. C. 1907; re-en. Sec. 10637, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2010; amd. Sec. 1, Ch. 80, L. 1935; re-en. Sec. 10637, R.C.M. 1935; R.C.M. 1947, 93-1701-2.**

Cross-References

Affidavit of printer — allowance of claims, 18-7-204.

Printers — penalty for false affidavit or overcharge, 18-7-205.

Service by publication — publisher's affidavit, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

26-1-1012. Affidavit of publication — where filed, prima facie evidence. If such affidavit be made in an action or special proceeding pending in a court, it may be filed with the court or clerk thereof. If not so made, it may be filed with the clerk of the county where the newspaper is printed. In either case the original affidavit or a copy thereof, certified by the judge of the court or clerk having it in custody, is prima facie evidence of the facts stated therein.

History: **En. Sec. 655, p. 209, L. 1877; re-en. Sec. 655, 1st Div. Rev. Stat. 1879; re-en. Sec. 676, 1st Div. Comp. Stat. 1887; re-en. Sec. 3332, C. Civ. Proc. 1895; re-en. Sec. 7994, Rev. C. 1907; re-en. Sec. 10638, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2011; re-en. Sec. 10638, R.C.M. 1935; R.C.M. 1947, 93-1701-3.**

Cross-References

Clerk of Court — filing, 3-5-501.

Affidavit of printer — allowance of claims, 18-7-204.

CHAPTER 2

SUBPOENAS AND WITNESSES

Part 1 — Subpoenas

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Part 1

Subpoenas

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Administrative proceedings subpoenas, 2-4-611.

Legislative subpoenas, 5-5-101.

Civil procedure — subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas for production of documentary evidence — civil procedure, Rule 45(b), M.R.Civ.P. (see Title 25, ch. 20).

Securities regulation — subpoenas, 30-10-304.

Investigative subpoenas, Title 46, ch. 4, part 3.

Grand jury — subpoenas, 46-11-313.

Criminal subpoenas, Title 46, ch. 15, part 1.

Inability to procure witness through subpoena — use of criminal depositions, 46-15-204.

26-2-101. Subpoena defined. The process by which the attendance of a witness is required is by a subpoena. It is a writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness. It may also require him to bring with him any books, documents, or other things under his control, which he is bound by law to produce in evidence.

History: En. Sec. 380, p. 212, L. 1867; re-en. Sec. 454, p. 127, Cod. Stat. 1871; re-en. Sec. 633, p. 204, L. 1877; re-en. Sec. 633, 1st Div. Rev. Stat. 1879; re-en. Sec. 654, 1st Div. Comp. Stat. 1887; en. Sec. 3300, C. Civ. Proc. 1895; re-en. Sec. 7974, Rev. C. 1907; re-en. Sec. 10618, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1985; re-en. Sec. 10618, R.C.M. 1935; R.C.M. 1947, 93-1501-3.

Cross-References

Civil subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Criminal subpoenas, Title 46, ch. 15, part 1.

26-2-102. Issuance of subpoena. The subpoena is issued as follows:

(1) To require attendance before a court or at the trial of an issue therein, it is issued under the seal of the court before which the attendance is required or in which the issue is pending.

(2) To require attendance out of the court before a judge, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this state, it is issued by the judge, justice, or other officer before whom the attendance is required.

(3) To require attendance before a commissioner appointed to take testimony by a court of a foreign country, of the United States, of any other state in the United States, or of any other district or county within this state or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any judge or justice of the peace in places within his respective jurisdiction, with like power to enforce attendance and, upon certificate of contumacy to said court, to punish contempt of his process as such judge or justice could exercise if the subpoena directed the attendance of the witness before his court in a matter pending therein.

History: En. Sec. 322, p. 111, Bannack Stat.; en. Sec. 381, p. 212, L. 1867; re-en. Sec. 455, p. 127, Cod. Stat. 1871; re-en. Sec. 634, p. 204, L. 1877; re-en. Sec. 634, 1st Div. Rev. Stat. 1879; re-en. Sec. 655, 1st Div. Comp. Stat. 1887; re-en. Sec. 3301, C. Civ. Proc. 1895; re-en. Sec. 7975, Rev. C. 1907; re-en. Sec. 10619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1986; re-en. Sec. 10619, R.C.M. 1935; R.C.M. 1947, 93-1501-4.

Cross-References

Officers taking proof of execution of instrument, 1-5-304.

Administrative proceedings, 2-4-104, 2-4-611.

Legislative Council, 5-11-107.

Civil actions — form and issuance, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).

Subpoena for taking depositions, Rule 45(d), M.R.Civ.P. (see Title 25, ch. 20).

Contempt — failure to obey subpoena, Rule 45(f), M.R.Civ.P. (see Title 25, ch. 20).

Masters — subpoena witnesses, Rule 53(d), M.R.Civ.P. (see Title 25, ch. 20).

Grand jury — subpoena of witness, 46-11-313.

Criminal subpoena — issuance, 46-15-101.

Witnesses from another state — criminal actions, 46-15-113.

Board of Pardons — issuance and service of subpoenas, 46-23-205.

26-2-103. Service of subpoena on concealed witness. If a witness is concealed in a building or vessel so as to prevent the service of a subpoena upon him, any court or judge or any officer issuing a subpoena may, upon proof by affidavit of the concealment and of the materiality of the witness, make an order that the sheriff of the county serve the subpoena and the sheriff must serve it accordingly and, for that purpose, may break into the building or vessel where the witness is concealed.

History: En. Sec. 383, p. 212, L. 1867; re-en. Sec. 457, p. 127, Cod. Stat. 1871; re-en. Sec. 636, p. 205, L. 1877; re-en. Sec. 636, 1st Div. Rev. Stat. 1879; re-en. Sec. 657, 1st Div. Comp. Stat. 1887; re-en. Sec. 3303, C. Civ. Proc. 1895; re-en. Sec. 7977, Rev. C. 1907; re-en. Sec. 10621, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1988; re-en. Sec. 10621, R.C.M. 1935; R.C.M. 1947, 93-1501-6.

Cross-References

Contempt of court, Title 3, ch. 1, part 5; Rule 45(f), M.R.Civ.P. (see Title 25, ch. 20).

Service of civil subpoenas, Rule 45(c), M.R.Civ.P. (see Title 25, ch. 20).

Service of criminal subpoenas, 46-15-107.

26-2-104. Disobedience — how punished. Disobedience to a subpoena or a refusal to be sworn or to answer as a witness or to subscribe an affidavit or deposition, when required, may be punished as a contempt by the court issuing the subpoena or requiring the witness to be so sworn, to so answer, or to so subscribe; and if the witness be a party, his complaint or answer may be stricken out.

History: En. Sec. 329, p. 112, Bannack Stat.; amd. Sec. 387, p. 213, L. 1867; re-en. Sec. 461, p. 128, Cod. Stat. 1871; re-en. Sec. 640, p. 206, L. 1877; re-en. Sec. 640, 1st Div. Rev. Stat. 1879; re-en. Sec. 661, 1st Div. Comp. Stat. 1887; re-en. Sec. 3306, C. Civ. Proc. 1895; re-en. Sec. 7980, Rev. C. 1907; re-en. Sec. 10624, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1991; re-en. Sec. 10624, R.C.M. 1935; R.C.M. 1947, 93-1501-9; amd. Sec. 17, Ch. 72, L. 1983.

Cross-References

Contempt of court, Title 3, ch. 7, part 5.

Legislative contempt, 5-5-103.

Motion to strike pleadings, Rule 12(f), M.R.Civ.P. (see Title 25, ch. 20).

Contempt — failure to obey subpoena, Rule 45(f), M.R.Civ.P. (see Title 25, ch. 20).

Board of Pardons subpoena — penalty for disobedience, 46-23-207.

26-2-105. Disobedience — civil damages. A witness disobeying a subpoena also forfeits to the party aggrieved the sum of $100 and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

History: En. Sec. 330, p. 112, Bannack Stat.; re-en. Sec. 388, p. 213, L. 1867; re-en. Sec. 462, p. 128, Cod. Stat. 1871; re-en. Sec. 641, p. 206, L. 1877; re-en. Sec. 641, 1st Div. Rev. Stat. 1879; re-en. Sec. 662, 1st Div. Comp. Stat. 1887; re-en. Sec. 3307, C. Civ. Proc. 1895; re-en. Sec. 7981, Rev. C. 1907; re-en. Sec. 10625, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1992; re-en. Sec. 10625, R.C.M. 1935; R.C.M. 1947, 93-1501-10.

Cross-References

Measure of damages for misconduct, 3-1-521.

Contempt — failure to obey subpoena, Rule 45(f), M.R.Civ.P. (see Title 25, ch. 20).

26-2-106. Warrant to arrest and bring in disobedient witness. In case of a failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service thereof and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.

History: En. Sec. 331, p. 112, Bannack Stat.; amd. Sec. 389, p. 213, L. 1867; re-en. Sec. 463, p. 128, Cod. Stat. 1871; re-en. Sec. 642, p. 207, L. 1877; re-en. Sec. 642, 1st Div. Rev. Stat. 1879; re-en. Sec. 663, 1st Div. Comp. Stat. 1887; re-en. Sec. 3308, C. Civ. Proc. 1895; re-en. Sec. 7982, Rev. C. 1907; re-en. Sec. 10626, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1993; re-en. Sec. 10626, R.C.M. 1935; R.C.M. 1947, 93-1501-11.

Cross-References

Detention, Art. II, sec. 23, Mont. Const.

Contempt — warrant of attachment or commitment, 3-1-513.

Contempt — arrest and detention by Sheriff, 3-1-515, 3-1-521.

Legislature — compelling attendance, 5-5-104.

26-2-107. Contents of warrant — execution. Every warrant of commitment issued by a court or officer pursuant to this part must specify therein, particularly, the cause of the commitment; and if it be for refusing to answer a question, such question must be stated in the warrant. Every warrant to arrest or commit a witness pursuant to this part must be directed to the sheriff of the county where the witness may be and must be executed by him in the same manner as process by the district court.

History: En. Sec. 643, p. 207, L. 1877; re-en. Sec. 643, 1st Div. Rev. Stat. 1879; re-en. Sec. 664, 1st Div. Comp. Stat. 1887; re-en. Sec. 3309, C. Civ. Proc. 1895; re-en. Sec. 7983, Rev. C. 1907; re-en. Sec. 10627, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1994; re-en. Sec. 10627, R.C.M. 1935; R.C.M. 1947, 93-1501-12.

Cross-References

Execution of process in District Court, Title 25, ch. 3.

Part 2

Securing Testimony of Witness Who Is a Prisoner

Part Cross-References

Criminal subpoena — persons imprisoned in state prison or in another county, 46-15-105.

26-2-201. Court order to obtain deposition or attendance of prisoner. If the witness be a prisoner confined in a jail or prison within this state, an order for his examination in the prison upon deposition or for his temporary removal and production before a court or officer for the purpose of being orally examined may be made as follows:

(1) by the court itself in which the action or special proceeding is pending unless it be a justice's court;

(2) by a justice of the supreme court or a judge of the district court of the county where the action or proceeding is pending if pending before a justice's court or before a judge or other person out of court.

History: En. Sec. 332, p. 112, Bannack Stat.; re-en. Sec. 390, p. 213, L. 1867; re-en. Sec. 464, p. 128, Cod. Stat. 1871; re-en. Sec. 644, p. 207, L. 1877; re-en. Sec. 644, 1st Div. Rev. Stat. 1879; re-en. Sec. 665, 1st Div. Comp. Stat. 1887; amd. Sec. 3310, C. Civ. Proc. 1895; re-en. Sec. 7984, Rev. C. 1907; re-en. Sec. 10628, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1995; re-en. Sec. 10628, R.C.M. 1935; R.C.M. 1947, 93-1501-13.

Cross-References

Detention, Art. II, sec. 23, Mont. Const.

Depositions — civil proceedings, Rules 27 through 32, M.R.Civ.P. (see Title 25, ch. 20).

Depositions — criminal proceedings, Title 46, ch. 15, part 2.

26-2-202. Motion and affidavit required. Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

History: En. Sec. 333, p. 113, Bannack Stat.; re-en. Sec. 391, p. 213, L. 1867; re-en. Sec. 465, p. 128, Cod. Stat. 1871; re-en. Sec. 645, p. 207, L. 1877; re-en. Sec. 645, 1st Div. Rev. Stat. 1879; re-en. Sec. 666, 1st Div. Comp. Stat. 1887; re-en. Sec. 3311, C. Civ. Proc. 1895; re-en. Sec. 7985, Rev. C. 1907; re-en. Sec. 10629, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1996; re-en. Sec. 10629, R.C.M. 1935; R.C.M. 1947, 93-1501-14.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

26-2-203. When production of witness may be required. If the witness be imprisoned in the county where the action or proceeding is pending, his production may be required. In all other cases his examination, when allowed, must be taken upon deposition.

History: En. Sec. 334, p. 113, Bannack Stat.; re-en. Sec. 392, p. 213, L. 1867; re-en. Sec. 466, p. 129, Cod. Stat. 1871; re-en. Sec. 646, p. 207, L. 1877; re-en. Sec. 646, 1st Div. Rev. Stat. 1879; re-en. Sec. 667, 1st Div. Comp. Stat. 1887; re-en. Sec. 3312, C. Civ. Proc. 1895; re-en. Sec. 7986, Rev. C. 1907; re-en. Sec. 10630, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1997; re-en. Sec. 10630, R.C.M. 1935; R.C.M. 1947, 93-1501-15.

Cross-References

Detention, Art. II, sec. 23, Mont. Const.

Depositions — civil, Rule 27, M.R.Civ.P. (see Title 25, ch. 20).

Depositions — criminal, Title 46, ch. 15, part 2.

Part 3

Duties of Witnesses

Part Cross-References

Witnesses — generally, Art. VI, Rules 601 through 613, M.R.Ev. (see Title 26, ch. 10).

Tampering with witnesses, 45-7-206.

Criminal actions — ensuring availability of material witness — preserving testimony, 46-11-601.

26-2-301. Witness required to attend when subpoenaed. A witness served with a subpoena must attend at the time appointed, with any papers under his control required by the subpoena, and answer all pertinent and legal questions and, unless sooner discharged, must remain until the testimony is closed.

History: En. Sec. 327, p. 112, Bannack Stat.; re-en. Sec. 385, p. 213, L. 1867; re-en. Sec. 459, p. 128, Cod. Stat. 1871; re-en. Sec. 638, p. 206, L. 1877; re-en. Sec. 638, 1st Div. Rev. Stat. 1879; re-en. Sec. 659, 1st Div. Comp. Stat. 1887; amd. Sec. 3400, C. Civ. Proc. 1895; re-en. Sec. 8029, Rev. C. 1907; re-en. Sec. 10673, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2064; re-en. Sec. 10673, R.C.M. 1935; R.C.M. 1947, 93-2101-1.

Cross-References

Exclusion of witness — others testifying, 3-1-313.

Production of documents and things, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

26-2-302. Witness required to answer questions. A witness must answer questions legal and pertinent to the matter in issue though his answer may establish a claim against himself, but he need not give an answer which will have a tendency to subject him to punishment for a felony, nor need he give an answer which will have a direct tendency to degrade his character unless it be to the very fact in issue or to a fact from which the fact in issue would be presumed.

History: En. Sec. 328, p. 112, Bannack Stat.; re-en. Sec. 386, p. 213, L. 1867; re-en. Sec. 460, p. 128, Cod. Stat. 1871; re-en. Sec. 639, p. 206, L. 1877; re-en. Sec. 639, 1st Div. Rev. Stat. 1879; re-en. Sec. 660, 1st Div. Comp. Stat. 1887; amd. Sec. 3401, C. Civ. Proc. 1895; re-en. Sec. 8030, Rev. C. 1907; re-en. Sec. 10674, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2065; re-en. Sec. 10674, R.C.M 1935; R.C.M. 1947, 93-2101-2; amd. Sec. 18, Ch. 72, L. 1983.

Cross-References

Right against self-incrimination, Art. II, sec. 25, Mont. Const.

Refusal to testify — contempt:

Administrative proceedings, 2-4-104.

Defined as contemptuous, 3-1-501.

Justices' Courts, 3-10-401.

City Courts, 3-11-303.

Before Legislature, 5-5-103.

Legislative Council, 5-11-107.

Criminal contempt, 45-7-309.

Civil execution of judgment — location of property — answer required, 25-14-101.

Impeachment by evidence of conviction of crime — not admissible, Rule 609, M.R.Ev. (see Title 26, ch. 10).

Perjury, 45-7-201.

False swearing, 45-7-202.

Compelling testimony of witness — immunity:

Securities regulation, 30-10-303, 30-14-221.

Investigative subpoenas, 46-4-305.

Judicial proceedings, 46-15-331.

26-2-303. Person present required to testify. A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

History: En. Sec. 326, p. 112, Bannack Stat.; re-en. Sec. 384, p. 212, L. 1867; re-en. Sec. 458, p. 128, Cod. Stat. 1871; re-en. Sec. 637, p. 206, L. 1877; re-en. Sec. 637, 1st Div. Rev. Stat. 1879; re-en. Sec. 658, 1st Div. Comp. Stat. 1887; re-en. Sec. 3305, C. Civ. Proc. 1895; re-en. Sec. 7979, Rev. C. 1907; re-en. Sec. 10623, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1990; re-en. Sec. 10623, R.C.M. 1935; R.C.M. 1947, 93-1501-8.

Part 4

Protection of Witnesses

26-2-401. Right of witness to protection from harassment. It is the right of a witness to be protected from irrelevant, improper, or insulting questions and from harsh or insulting demeanor; to be detained only so long as the interests of justice require it; to be examined only as to matters legal and pertinent to the issue.

History: En. Sec. 3402, C. Civ. Proc. 1895; re-en. Sec. 8031, Rev. C. 1907; re-en. Sec. 10675, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2066; re-en. Sec. 10675, R.C.M. 1935; R.C.M. 1947, 93-2101-3.

Cross-References

Evidence of character and conduct of witnesses, Rule 608, M.R.Ev. (see Title 26, ch. 10).

Detaining witnesses — criminal — material witness, 46-11-601.

Compelling testimony of witness — criminal, 46-15-331.

26-2-402. Witness protected from arrest when attending, going, and returning. Every person who has been, in good faith, served with a subpoena to attend as a witness before a court, judge, commissioner, referee, or other person in a case where the disobedience of the witness may be punished as a contempt is exonerated from arrests in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

History: En. Sec. 335, p. 113, Bannack Stat.; amd. Sec. 393, p. 213, L. 1867; re-en. Sec. 467, p. 129, Cod. Stat. 1871; re-en. Sec. 674, p. 215, L. 1877; re-en. Sec. 3403, C. Civ. Proc. 1895; re-en. Sec. 8032, Rev. C. 1907; re-en. Sec. 10676, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2067; re-en. Sec. 10676, R.C.M. 1935; R.C.M. 1947, 93-2101-4.

Cross-References

Persons exempt from arrest, 46-6-102.

Criminal subpoena — exemption from arrest — person from out-of-state, 46-15-120.

26-2-403. Arrest void — punishment and liability. The arrest of a witness contrary to 26-2-402 is void and, when willfully made, is a contempt of the court; and the person making it is responsible to the witness arrested for double the amount of the damages which may be assessed against him and is also liable to an action at the suit of the party serving the witness with a subpoena for the damages sustained by him in consequence of the arrest.

History: En. Sec. 3404, C. Civ. Proc. 1895; re-en. Sec. 8033, Rev. C. 1907; re-en. Sec. 10677, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2068; re-en. Sec. 10677, R.C.M. 1935; R.C.M. 1947, 93-2101-5.

Cross-References

Contempt of court, Title 3, ch. 1, part 5.

Measure of damages, Title 27, ch. 1, part 3.

Liability, Title 27, ch. 1, part 7.

26-2-404. Affidavit of arrested witness — exoneration of arresting officer. (1) An officer is not liable for making the arrest in ignorance of the facts creating the exoneration but is liable for any subsequent detention of the witness if such witness claims the exemption and makes an affidavit stating that:

(a) he has been served with a subpoena to attend as a witness before a court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued;

(b) he has not thus been served by his own procurement with the intention of avoiding arrest; and

(c) he is at the time going to the place of attendance, returning therefrom, or remaining there in obedience to the subpoena.

(2) The affidavit may be taken by the officer and exonerates him from liability for discharging the witness when arrested.

History: En. Sec. 394, p. 214, L. 1867; re-en. Sec. 468, p. 129, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 3405, C. Civ. Proc. 1895; re-en. Sec. 8034, Rev. C. 1907; re-en. Sec. 10678, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2069; re-en. Sec. 10678, R.C.M. 1935; R.C.M. 1947, 93-2101-6; amd. Sec. 19, Ch. 72, L. 1983.

Cross-References
Affidavits, Title 26, ch. 1, part 10.
Subpoenas, Title 26, ch. 2, part 1.
Unlawful restraint, 45-5-301.
Arrest by a peace officer, Title 46, ch. 6, part 4.

26-2-405. Discharge of witness from arrest by court or judge. The court or officer issuing the subpoena and the court or officer before whom the attendance is required may discharge the witness from an arrest made in violation of 26-2-402. If the court has adjourned before the arrest or before application for discharge, a judge of the court may grant the discharge.

History: En. Sec. 3406, C. Civ. Proc. 1895; re-en. Sec. 8035, Rev. C. 1907; re-en. Sec. 10679, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2070; re-en. Sec. 10679, R.C.M. 1935; R.C.M. 1947, 93-2101-7.

Cross-References
Subpoena for attendance of witness, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).
Subpoenas, Title 26, ch. 2, part 1.

Part 5

Witness Fees

26-2-501. Witnesses in courts of record and before certain court officers. (1) Witness fees are as follows:

(a) for attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions or commissioners to assess damages or otherwise, for each day, $10;

(b) for mileage in traveling to the place of trial or hearing, each way, for each mile, a mileage allowance as provided in 2-18-503.

(2) However, no officer of the United States, the state of Montana, or any county, incorporated city, or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceeding, and no witness shall receive fees in any more than one criminal case on the same day.

History: En. Sec. 4648, Pol. C. 1895; re-en. Sec. 3182, Rev. C. 1907; re-en. Sec. 4936, R.C.M. 1921; amd. Sec. 2, Ch. 18, L. 1935; re-en. Sec. 4936, R.C.M. 1935; amd. Sec. 2, Ch. 117, L. 1963; amd. Sec. 3, Ch. 332, L. 1971; amd. Sec. 11, Ch. 439, L. 1975; R.C.M. 1947, 25-404.

Cross-References
Costs generally allowable, 25-10-201.
Costs of securing witnesses, 25-10-205.
Expenses of grand jury, 46-11-319.

26-2-502. Witnesses in courts not of record — civil actions. Witnesses in courts not of record in civil actions and proceedings shall receive $10 for each day's actual attendance and mileage as provided in 2-18-503 for each mile actually traveled in going from their residences by the usual traveled route to the court and return.

History: En. Sec. 3, Ch. 48, L. 1903; re-en. Sec. 3186, Rev. C. 1907; re-en. Sec. 4941, R.C.M. 1921; amd. Sec. 3, Ch. 18, L. 1935; re-en. Sec. 4941, R.C.M. 1935; amd. Sec. 4, Ch. 332, L. 1971; amd. Sec. 7, Ch. 420, L. 1975; R.C.M. 1947, 25-409; amd. Sec. 2, Ch. 334, L. 1985.

Cross-References
Courts of record, 3-1-102.

26-2-503. Witnesses in courts not of record — criminal actions and on coroner's inquests. Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive $10 per day for actual attendance and mileage as provided in 2-18-503 for each mile actually and necessarily traveled from their places of residence to the court and return.

History: En. Sec. 4, Ch. 48, L. 1903; re-en. Sec. 3187, Rev. C. 1907; re-en. Sec. 4942, R.C.M. 1921; amd. Sec. 4, Ch. 18, L. 1935; re-en. Sec. 4942, R.C.M. 1935; amd. Sec. 5, Ch. 332, L. 1971; amd. Sec. 8, Ch. 420, L. 1975; R.C.M. 1947, 25-410; amd. Sec. 3, Ch. 334, L. 1985.

Cross-References

Payment of costs of inquest, 7-4-2913.

Courts of record, 26-2-503.

Coroner's inquests, Title 46, ch. 4, part 2.

26-2-504. Interpreters to be paid as witnesses. Interpreters and translators must receive the same fees as witnesses.

History: En. Sec. 4657, Pol. C. 1895; re-en. Sec. 3191, Rev. C. 1907; re-en. Sec. 4946, R.C.M. 1921; re-en. Sec. 4946, R.C.M. 1935; R.C.M. 1947, 25-413.

Cross-References

English language — judicial proceedings, 3-1-314.

Interpreters, Rule 604, M.R.Ev. (see Title 26, ch. 10).

Interpreters for the deaf — compensation, 49-4-509.

26-2-505. Expert witnesses. An expert is a witness and receives the same compensation as a witness.

History: En. Sec. 4658, Pol. C. 1895; re-en. Sec. 3192, Rev. C. 1907; re-en. Sec. 4947, R.C.M. 1921; re-en. Sec. 4947, R.C.M. 1935; R.C.M. 1947, 25-414.

Cross-References

Testimony of experts, Rule 702, M.R.Ev. (see Title 26, ch. 10).

26-2-506. Fees paid by party subpoenaing in civil actions. The fees and compensation of a witness in all civil actions must be paid by the party who caused him to be subpoenaed.

History: En. Sec. 4654, Pol. C. 1895; re-en. Sec. 3188, Rev. C. 1907; re-en. Sec. 4943, R.C.M. 1921; re-en. Sec. 4943, R.C.M. 1935; R.C.M. 1947, 25-411.

Cross-References

Witness fees — allowable cost, 25-10-201.

Subpoena for attendance of witness, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).

26-2-507. Demand for advance payment of witness fees in civil action. No witness shall be obliged to attend court or before a referee, officer authorized to take depositions, or commissioner, when subpoenaed, unless his mileage and fees for 1 day's attendance are tendered or paid to him on his demanding the same or unless his fees for attendance thereafter for each day are tendered or paid to him on demand. The fees of witnesses paid may be taxed as costs against the losing party.

History: En. Sec. 4655, Pol. C. 1895; re-en. Sec. 3189, Rev. C. 1907; re-en. Sec. 4944, R.C.M. 1921; amd. Sec. 1, Ch. 71, L. 1927; re-en. Sec. 4944, R.C.M. 1935; R.C.M. 1947, 25-412.

Cross-References

Witness fees — allowable cost, 25-10-201.

26-2-508. Witnesses on behalf of state or county — advance payment not required. The attorney general or any county attorney is authorized to cause subpoenas to be issued and compel the attendance of witnesses on behalf of the state or county without paying or tendering fees in advance to either officers or witnesses; and any witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against and is liable in the same manner as is provided by law in other cases where fees have been tendered or paid.

History: En. Sec. 4620, Pol. C. 1895; re-en. Sec. 3153, Rev. C. 1907; re-en. Sec. 4902, R.C.M. 1921; re-en. Sec. 4902, R.C.M. 1935; R.C.M. 1947, 25-218.

Cross-References

Duties of Attorney General, 2-18-501.

County Attorney — duties, 7-4-2711, 7-4-2716.

Failure of witness to attend, 26-2-104.

26-2-509. Certificate of clerk to witness to obtain payment. The clerk of any court before which any witness shall have attended on behalf of the state or county in any civil action must give to such witness a certificate under seal of travel and attendance, which shall entitle him to receive the amount therein stated from the state or county treasurer.

History: En. Sec. 4621, Pol. C. 1895; re-en. Sec. 3154, Rev. C. 1907; re-en. Sec. 4903, R.C.M. 1921; re-en. Sec. 4903, R.C.M. 1935; R.C.M. 1947, 25-219.

Cross-References

Clerk of Court — duties relating to witnesses, 3-5-510 through 3-5-512.

26-2-510. Application of sections exempting from advance payment. The provisions of 26-2-508 and 26-2-509 shall extend to all actions and proceedings brought in the name of the attorney general or any other person or persons for the benefit of the state or county.

History: En. Sec. 4622, Pol. C. 1895; re-en. Sec. 3155, Rev. C. 1907; re-en. Sec. 4904, R.C.M. 1921; re-en. Sec. 4904, R.C.M. 1935; R.C.M. 1947, 25-220.

Cross-References

Duties of Attorney General, 2-18-501.

Proceedings for the benefit of state, Rule 17(a), M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 3

EFFECT OF FORMER JUDGMENTS AND ORDERS

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26-3-201. Effect of judgment or final order — when conclusive.
26-3-202. Effect of other judicial orders — when disputable presumption created.
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26-3-204. Effect of judicial record of foreign court of admiralty.
26-3-205. Effect of judgments of other foreign tribunals.

Chapter Cross-References

Prohibition against double jeopardy, Art. II, sec. 25, Mont. Const.

Judgments — generally, Title 25, ch. 9.

Effect of former criminal prosecutions, Title 46, ch. 11, part 5.

Part 1
General Provisions

26-3-101. Kinds of jurisdiction necessary to sustain a record. The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment.

History: En. Sec. 3205, C. Civ. Proc. 1895; re-en. Sec. 7923, Rev. C. 1907; re-en. Sec. 10567, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1917; re-en. Sec. 10567, R.C.M. 1935; R.C.M. 1947, 93-1001-29.

Cross-References

Sovereignty and jurisdiction of the state, Title 2, ch. 1, part 1.

Territorial limits on jurisdiction, Title 2, ch. 1, part 2.

Jurisdiction:

Supreme Court, Title 3, ch. 2, part 2.

District Court, 3-5-302.

Municipal Court, 3-6-103.

Justice's Court, 3-10-303.

Water Court, 3-7-502.

City Courts, 3-11-102, 3-11-103.

Persons subject to jurisdiction — civil procedure, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

26-3-102. What considered adjudged in a judgment. That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged or which was actually and necessarily included therein or necessary thereto.

History: En. Sec. 3199, C. Civ. Proc. 1895; re-en. Sec. 7917, Rev. C. 1907; re-en. Sec. 10561, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1911; re-en. Sec. 10561, R.C.M. 1935; R.C.M. 1947, 93-1001-23.

Cross-References

Apparent nonexistence, 1-3-221.

Contents of judgment, Title 25, ch. 9, part 2.

26-3-103. When parties are considered to be the same. The parties are deemed to be the same when those between whom the evidence is offered were on opposite sides in the former case and a judgment or other determination could in that case have been made between them alone, though other parties were joined with both or either.

History: En. Sec. 3198, C. Civ. Proc. 1895; re-en. Sec. 7916, Rev. C. 1907; re-en. Sec. 10560, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1910; re-en. Sec. 10560, R.C.M. 1935; R.C.M. 1947, 93-1001-22.

Cross-References

Parties, Title 25, ch. 5.

Necessary joinder of parties, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

26-3-104. Principal bound when surety bound. Whenever, pursuant to 26-3-102, 26-3-103, 26-3-201, and 26-3-202, a party is bound by a record and such party stands in the relation of a surety for another, the latter is also bound from the time that he has notice of the action or proceeding and an opportunity at the surety's request to join in the defense.

History: En. Sec. 3200, C. Civ. Proc. 1895; re-en. Sec. 7918, Rev. C. 1907; re-en. Sec. 10562, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1912; re-en. Sec. 10562, R.C.M. 1935; R.C.M. 1947, 93-1001-24.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

26-3-105. Impeachment of a judicial record. Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, of collusion between the parties, or of fraud in the party offering the record in respect to the proceedings.

History: En. Sec. 3204, C. Civ. Proc. 1895; re-en. Sec. 7922, Rev. C. 1907; re-en. Sec. 10566, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1916; re-en. Sec. 10566, R.C.M. 1935; R.C.M. 1947, 93-1001-28.

Cross-References

Conclusive presumptions — conclusive judgment or order of court, 26-1-601.

Disputable presumption — judicial records, 26-1-602.

Self-authentication of record, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Fraud, 28-2-404 through 28-2-406.

Part 2

Effect of Specific Kinds of Judicial Records

Part Cross-References

Prohibition against double jeopardy, Art. II, sec. 25, Mont. Const.

Criminal offense not merged into criminal offense — separate actions, 45-1-104.

26-3-201. Effect of judgment or final order — when conclusive. The effect of a judgment or final order in an action or special proceeding before a court or judge of this state or of the United States having jurisdiction to pronounce the judgment or order is as follows:

(1) In case of a judgment or order against a specific thing, or in respect to the probate of a will or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will or administration, or the condition or relation of the person.

(2) In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided they have notice, actual or constructive, of the pendency of the action or proceeding.

History: En. Sec. 3196, C. Civ. Proc. 1895; re-en. Sec. 7914, Rev. C. 1907; re-en. Sec. 10558, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1908; re-en. Sec. 10558, R.C.M. 1935; R.C.M. 1947, 93-1001-20.

Cross-References

Full faith and credit — judicial proceedings of another state, Art. IV, sec. 1, U.S. Const. (see annotations vol. 1, Federal Materials).

Judgment, Title 25, ch. 9.

Pleading a judgment, Rule 9(e), M.R.Civ.P. (see Title 25, ch. 20).

Conclusive presumption — conclusive judgment or order, 26-1-601.

Self-authentication of judicial record, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Uniform Probate Code, Title 72, ch. 1 through 5.

26-3-202. Effect of other judicial orders — when disputable presumption created. Other judicial orders of a court or judge of this state or of the United States create a disputable presumption, according to the matter directly determined, between the same parties and their representatives and successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity.

History: En. Sec. 3197, C. Civ. Proc. 1895; re-en. Sec. 7915, Rev. C. 1907; re-en. Sec. 10559, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1909; re-en. Sec. 10559, R.C.M. 1935; R.C.M. 1947, 93-1001-21.

Cross-References

Full faith and credit — judicial proceedings of other states, Art. IV, sec. 1, U.S. Const. (see annotations vol. 1, Federal Materials).

Disputable presumptions, 26-1-602.

Self-authenticating record, Rule 902, M.R.Ev. (see Title 26, ch. 10).

26-3-203. Effect of judicial record of another state. The effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here by an action or special proceeding and except that the authority of a guardian or committee or of an executor or administrator does not extend beyond the jurisdiction of the government under which he was invested with his authority.

History: En. Sec. 3201, C. Civ. Proc. 1895; re-en. Sec. 7919, Rev. C. 1907; re-en. Sec. 10563, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1913; re-en. Sec. 10563, R.C.M. 1935; R.C.M. 1947, 93-1001-25.

Cross-References

Full faith and credit — judicial proceedings of other states, Art. IV, sec. 1, U.S. Const. (see annotations vol. 1, Federal Materials).

Self-authenticating records, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Personal representatives — foreign — jurisdiction, 72-3-506.

Guardianship of minor — foreign testamentary appointment, 72-5-212.

Guardians of incapacitated persons — court of residence and court of appointment, 72-5-322.

26-3-204. Effect of judicial record of foreign court of admiralty. The effect of the judicial record of a court of admiralty of a foreign country is the same as if it were the record of a court of admiralty of the United States.

History: En. Sec. 3202, C. Civ. Proc. 1895; re-en. Sec. 7920, Rev. C. 1907; re-en. Sec. 10564, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1914; re-en. Sec. 10564, R.C.M. 1935; R.C.M. 1947, 93-1001-26.

Cross-References

U.S. Court of Admiralty, Art. III, sec. 2, U.S. Const. (see annotations vol. 1, Federal Materials).

26-3-205. Effect of judgments of other foreign tribunals. The effect of the judgment of any other tribunal of a foreign country having jurisdiction to pronounce the judgment is as follows:

(1) In case of a judgment against a specific thing, the judgment is conclusive upon the title to the thing.

(2) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title and can only be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

History: En. Sec. 3203, C. Civ. Proc. 1895; re-en. Sec. 7921, Rev. C. 1907; re-en. Sec. 10565, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1915; re-en. Sec. 10565, R.C.M. 1935; R.C.M. 1947, 93-1001-27.

Cross-References

Conclusive presumptions — conclusive judgment or order, 26-1-601.

Disputable presumptions — nonconclusive judicial record, 26-1-602.

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CHAPTER 10

MONTANA RULES OF EVIDENCE

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Administrative contested cases — rules applicable, 2-4-612.

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Criminal appeals — record to contain evidence, Title 46, ch. 20, part 3.

Habeas corpus hearings — applicability of rules, 46-22-305.

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Mentally ill — hearings — rules applicable, 53-21-115.

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Water quality standards — adoption of administrative classifications — rules not applicable, 75-5-307.

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Article I

General Provisions

Rule 100. Short title.

These rules may be known and cited as the Montana Rules of Evidence.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 101. Scope.

(a) Proceedings generally. These rules govern all proceedings in all courts in the state of Montana with the exceptions stated in this rule.

(b) Rules of privilege. The rules with respect to privileges found in Article V apply at all stages of all actions, cases and proceedings.

(c) Rules inapplicable. The rules (other than those with respect to privileges) do not apply in the following situations:

(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand jury. Proceedings before grand juries.

(3) Miscellaneous proceedings. Proceedings for extradition or rendition; preliminary examinations and proceedings on applications for leave to file informations in criminal cases; sentencing; dispositional hearings in youth court proceedings; granting or revoking probation or parole; issuance of warrants for arrest, criminal summonses and notices to appear, and search warrants; and proceedings with respect to release on bail or otherwise.

(4) Summary proceedings. Proceedings, other than motions for summary judgment, where the court is authorized by law to act summarily.

(5) Other miscellaneous proceedings. Ex parte matters; and proceedings, when authorized by law, which are uncontested or nonadversary.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Courts of the state of Montana, 3-1-101.

Summary proceeding — contempt, 3-1-511.

Youth Court dispositional hearings, 41-5-522.

Search warrants, 46-5-221.

Warrants for arrest — issuance, 46-6-201.

Criminal notices to appear, 46-6-310.

Release on bail, 46-9-301.

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Grand jury, Title 46, ch. 11, part 3.

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Rule 102. Purpose and construction.

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 103. Rulings on evidence.

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of offer and ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of the jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Plain error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Grounds for new trial — evidentiary considerations, 25-11-102.

Record of excluded evidence — offer of proof, Rule 43(c), M.R.Civ.P. (see Title 25, ch. 20).

Lack of opportunity to object — civil procedure, Rule 46, M.R.Civ.P. (see Title 25, ch. 20).

Masters — may rule on evidence, Rule 53(c), M.R.Civ.P. (see Title 25, ch. 20).

New trial — harmless error in admitting evidence, Rule 61, M.R.Civ.P. (see Title 25, ch. 20).

Record on appeal, Rule 9, M.R.App.P. (see Title 25, ch. 21).

Appeals — rulings against respondent, Rule 14, M.R.App.P. (see Title 25, ch. 21).

Question of law — admission of evidence, 26-1-201.

Exemplary or punitive damages — limit on evidence regarding defendant's financial affairs or net worth, 27-1-221.

Criminal depositions — objections to receiving in evidence, 46-15-204.

Criminal appeals — affecting substantial rights, 46-20-701(2).

Rule 104. Preliminary questions of admissibility.

(a) Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court. In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Admissibility subject to a condition. Except as otherwise provided by law, when the admissibility of evidence depends upon proof of other connecting facts, the court may admit such evidence subject to the condition that further evidence be introduced sufficient to support a finding of those connecting facts. The order of proof may be regulated by the sound discretion of the court.

(c) Hearing of jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness and so requests.

(d) Testimony by accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Construction of instruments, Title 1, ch. 4, part 1.

Interpretation of instruments — admissibility of usage, 1-4-109.

Administrative Rules of Montana — intent of Legislature — poll, 2-4-404, 5-18-110.

Question of law — decided by court, 25-7-102, 26-1-201.

Allegations — general rules of pleading, Rule 8, M.R.Civ.P. (see Title 25, ch. 20).

Depositions — objections on admissibility, Rule 32(b), M.R.Civ.P. (see Title 25, ch. 20).

Weight and credibility — jury to judge, 26-1-203, 26-1-302.

Relevancy of evidence, Rule 401, M.R.Ev. (see Title 26, ch. 10).

Privileges, Art. VI, M.R.Ev. (see Title 26, ch. 10).

Exemplary or punitive damages — limit on evidence regarding defendant's financial affairs or net worth, 27-1-221.

Parol evidence rule — written contracts, 28-2-905, 28-3-402.

Inadmissibility of results of polygraph, 37-62-302.

Crime of sexual intercourse without consent — evidence of sexual conduct of victim, 45-5-503.

Houses of prostitution — additional types of evidence admissible, 45-5-604.

Endangering welfare of children — additional types of evidence admissible, 45-5-622.

Admissibility of confessions, 46-13-301.

Criminal actions — motion to suppress evidence — exclusionary rule, 46-13-302.

Mental condition — admissible on issue of criminal intent, 46-14-102.

Motor vehicle accident reports — confidential — not admissible, 61-7-114.

Rule 105. Limited admissibility.

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Jury instructions — civil, 25-7-301; Rule 51, M.R.Civ.P. (see Title 25, ch. 20).

Who to judge effect or value of evidence, 26-1-203.

Jury instructions — criminal, 46-16-401.

Rule 106. Remainder of or related acts, writings, or statements.

(a) When part of an act, declaration, conversation, writing or recorded statement or series thereof is introduced by a party:

(1) an adverse party may require the introduction at that time of any other part of such item or series thereof which ought in fairness to be considered at that time; or

(2) an adverse party may inquire into or introduce any other part of such item of evidence or series thereof.

(b) This rule does not limit the right of any party to cross-examine or further develop as part of the case matters covered by this rule.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Declaration, act, or omission which is a part of the transaction, 26-1-103.

Criminal depositions — part entered — offer of other parts, 46-15-204.

Article II
Judicial Notice

Rule 201. Judicial notice of facts.

(a) Scope of rule. This rule governs judicial notice of all facts.

(b) Kinds of facts. A fact to be judicially noticed must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing the jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

State Tax Appeal Board seal — judicial notice, 15-2-106.

Jury to judge effect or value of evidence — except conclusive evidence, 26-1-203.

Hearsay — effect, Rule 803, M.R.Ev. (see Title 26, ch. 10).

Rule 202. Judicial notice of law.

(a) Scope of rule. This rule governs judicial notice of law.

(b) Kinds of law. Law includes but is not limited to the following:

(1) The common law, constitutions and statutes of the United States and of this and every other state, territory and jurisdiction of the United States;

(2) Duly enacted ordinances and regulations of governmental divisions of this state, including their charters;

(3) Regulations and legislative enactments issued by or under authority of the United States and of this and any state of the United States by or for their agencies or administrations;

(4) Official acts of the legislative, executive, and judicial departments of the United States and of this and any state of the United States;

(5) Private acts and resolutions of the Congress of the United States and of the legislature of this state;

(6) Records of any court of this state or of any court of record of the United States or any court of record of any state of the United States;

(7) Rules of practice and procedure of any court of this state or of any court of record of the United States or any court of record of any state of the United States;

(8) The law of foreign nations;

(9) International law;

(10) Maritime law;

(11) The seals of office of the officers of government in the legislative, executive, and judicial departments of government of the United States and of this and every other state, territory and jurisdiction of the United States, of any foreign jurisdiction recognized by the executive power of the United States, and of notaries public.

(c) When discretionary. A court may take judicial notice of the law listed in parts 2-10 of Rule 202(b) or other law, whether requested or not. The court may inform itself of any law in such manner as it may deem proper and the court may call upon counsel to aid it in obtaining such information.

(d) When mandatory. A court shall take judicial notice:

(1) of the common law, constitutions and statutes of the United States and of this and every other state, territory and jurisdiction of the United States; and

(2) of any other law when requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the law noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice.

(1) Judicial notice of the laws of this state and of the United States may be taken at any stage of the proceedings.

(2) Any party may present to the judge or court any admissible evidence of law. To enable a party to offer evidence of the law other than of this state and of the United States or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse party either in the pleadings or otherwise.

(g) Question for the court. Except as otherwise provided by law, the determination of law shall be made by the court.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Common law — applicability, 1-1-108.

Administrative rules — judicial notice, 2-4-505.

Courts of record — Montana, 3-1-102.

Seal of State Tax Appeal Board — statutory recognition, 15-2-106.

Issue concerning foreign law — notice, Rule 44.1, M.R.Civ.P. (see Title 25, ch. 20).

Questions of law — province of court, 26-1-201.

Books containing laws presumed correct, 26-1-603.

Self-authenticating public documents and records — official publications, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Contents of documents — "best evidence rule", Art. X, M.R.Ev. (see Title 26, ch. 10).

Article III
Presumptions

Article Cross-References

Presumptions — statutory provisions, Title 26, ch. 1, part 6.

List of presumptions — Table "D" (see part compiler's comments, Title 26, ch. 1, part 6).

Rule 301. Presumptions in general.

(a) Presumption defined. A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action or proceeding.

(b) Classification and effect of presumptions.

(1) Conclusive presumptions are presumptions that are specifically declared conclusive by statute. Conclusive presumptions may not be controverted.

(2) All presumptions, other than conclusive presumptions, are disputable presumptions and may be controverted. A disputable presumption may be overcome by a preponderance of evidence contrary to the presumption. Unless the presumption is overcome, the trier of fact must find the assumed fact in accordance with the presumption.

(c) Inconsistent presumptions. If presumptions are inconsistent the court shall apply the presumption that is founded upon weightier considerations of public policy. If considerations of public policy are of equal weight the court shall disregard both presumptions.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Conclusive presumptions — statutory provisions, 26-1-601.

Disputable presumptions — statutory provisions, 26-1-602.

Rule 302. Applicability of federal law in civil cases.

In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which federal law supplies the rule of decision is determined in accordance with federal law.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Article IV
Relevancy and Its Limits

Rule 401. Definition of relevant evidence.

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Relevant evidence may include evidence bearing upon the credibility of a witness or hearsay declarant.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by constitution, statute, these rules, or other rules applicable in the courts of this state. Evidence which is not relevant is not admissible.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Limitation of relevant evidence — pretrial procedure, Rule 16, M.R.Civ.P. (see Title 25, ch. 20).

Disobedience to discovery — prohibition on introduction of evidence, Rule 37(b), M.R.Civ.P. (see Title 25, ch. 20).

Admissibility of evidence, Rule 104, M.R.Ev. (see Title 26, ch. 10).

Exemplary or punitive damages — limit on evidence regarding defendant's financial affairs or net worth, 27-1-221.

Statute of Frauds — contracts, 28-2-903.

Parol evidence rule — written contracts, 28-2-905, 28-3-402.

Statute of Frauds — U.C.C. sales, 30-2-201.

Inadmissibility of polygraph examination or similar test conducted by polygraph examiner, 37-62-302.

Sexual intercourse without consent — victim's sexual conduct — limits on admissibility, 45-5-503.

Exclusionary rule, 46-13-302.

Responsibility of vehicle users and owners — matters not to be evidence in civil suits, 61-6-108.

Failure to use child restraints in motor vehicles — admissible — no presumption of negligence, 61-9-422.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Cumulative evidence defined, 26-1-102.

Witnesses — protection from harassment, 26-2-401.

Rule 404. Character evidence not admissible to prove conduct, exceptions; other crimes; character in issue.

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same.

(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case or in an assault case where the victim is incapable of testifying to rebut evidence that the victim was the first aggressor.

(3) Character of witness. Evidence of the character of a witness, as provided in Article VI.

(b) Other crimes, wrongs, acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) Character in issue. Evidence of a person's character or a trait of character is admissible in cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 405. Methods of proving character.

(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, or where the character of the victim relates to the reasonableness of force used by the accused in self defense, proof may also be made of specific instances of that person's conduct.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Opinion testimony by lay witnesses, Rule 701, M.R.Ev. (see Title 26, ch. 10).

Rule 406. Habit; routine practice.

(a) Habit and routine practice defined. A habit is a person's regular response to a repeated specific situation. A routine practice is a regular course of conduct of a group of persons or an organization.

(b) Admissibility. Evidence of habit or of routine practice, whether corroborated or not, and regardless of the presence of eyewitnesses, is relevant to prove that conduct on a particular occasion was in conformity with the habit or routine practice.

(c) Method of proof. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Corroborative evidence defined, 26-1-102.

Opinion testimony of lay witnesses, Rule 701, M.R.Ev. (see Title 26, ch. 10).

Usage of trade — U.C.C., 30-1-205.

Rule 407. Subsequent remedial measures.

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

Rule 408. Compromise and offers to compromise.

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Offers of judgment — not admissible:

District Court, Rule 68, M.R.Civ.P. (see Title 25, ch. 20).

Municipal Court, 25-30-101.

Voluntary partial payment of claim — not admissible, Title 26, ch. 1, part 7.

Confession of judgment, Title 27, ch. 9, part 1.

Rule 409. Payment of expenses.

Evidence of payment of expenses occasioned by an injury or occurrence is not admissible to prove liability.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Voluntary payment of claims — not admissible, Title 26, ch. 1, part 7.

Rule 410. Offer to plead guilty; nolo contendere; withdrawn plea of guilty.

Evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer. This rule shall not apply to the introduction of voluntary and reliable statements made in court on the record in connection with any of the foregoing pleas or offers where offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false statement.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Plea of guilty, 46-12-204.

Deferred imposition of sentence — withdrawal of guilty plea, 46-18-204.

Rule 411. Liability insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

Actions against public bodies — insurance not to be disclosed, 33-23-102.

Responsibility of vehicle owners and users — matters not to be evidence in civil suits, 61-6-108.

Vehicles — mandatory liability protection, Title 61, ch. 6, part 3.

Article V
Privileges

Article Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Statutory provisions on privileges — list, Title 26, ch. 1, part 8.

Rule 501. Privileges recognized only as provided.

Except as otherwise provided by constitution, statute, these rules, or other rules applicable in the courts of this state, no person has a privilege to:

(1) refuse to be a witness;

(2) refuse to disclose any matter;

(3) refuse to produce any object or writing; or

(4) prevent another from being a witness or disclosing any matter or producing any object or writing.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Statutory provisions on evidence — list, Title 26, ch. 1, part 8.

Witness required to answer questions, 26-2-302.

Child abuse and neglect — privileges suspended except attorney-client, 41-3-201, 41-3-204, 41-3-404.

Promoting prostitution — testimony of spouse, 45-5-604.

Tampering with witnesses and informants, 45-7-206.

Rule 502. Identity of informer.

(a) Rule of privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law.

(b) Who may claim the privilege. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

(c) Exceptions and limitations.

(1) Voluntary disclosure; informer a witness. No privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the informer's communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the public entity.

(2) Testimony on relevant issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a criminal case or to a

fair determination of a material issue on the merits in a civil case to which a public entity is a party, and the public entity invokes the privilege, the court shall give the public entity an opportunity to show facts relevant to determining whether the informer can, in fact, supply that testimony.

If the Court finds that the informer should be required to give the testimony, and the public entity elects not to disclose the informer's identity, the court on motion of the defendant in a criminal case shall dismiss the charges to which the testimony would relate, and the court may do so on its own motion. In civil cases, the court may make any order that justice requires.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Discovery of witnesses — notice of certain defenses, 46-15-323.

Rule 503. Waiver of privilege by voluntary disclosure.

(a) General rule. A person upon whom these rules confer a privilege against disclosure waives the privilege if the person or the person's predecessor while the holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

(b) Joint holders. Where two or more persons are joint holders of a privilege, a waiver of the right of a particular joint holder to claim the privilege does not affect the right of another joint holder to claim the privilege.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 504. Privileged matter disclosed under compulsion or without opportunity to claim the privilege.

A claim of privilege is not defeated by a disclosure which was (a) compelled erroneously or (b) made without opportunity to claim the privilege.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 505. Comment upon or inference from claim of privilege.

The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by the court or counsel. No inference may be drawn therefrom.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Instruction — weaker or less satisfactory evidence, 26-1-303.

Presumption — evidence suppressed as adverse, 26-1-602.

Waiver of privilege, 26-1-903.

Article VI
Witnesses

Article Cross-References

Masters — power to subpoena witnesses, Rule 53(d), M.R.Civ.P. (see Title 25, ch. 20).

Witness — defined, 26-1-101.

Witnesses — generally, Title 26, ch. 2.

Subpoena of witnesses, Title 26, ch. 2, part 1.

Perjury — crime, 45-7-201.

Tampering with witnesses or informants — crime, 45-7-206.

Videotaped testimony admissible — victim of sexual intercourse without consent, deviate sexual conduct, or incest, Title 46, ch. 15, part 4.

Interpreters for the deaf in official proceedings, Title 49, ch. 4, part 5.

Rule 601. Competency in general; disqualification.

(a) General rule competency. Every person is competent to be a witness except as otherwise provided in these rules.

(b) Disqualification of witnesses. A person is disqualified to be a witness if the court finds that (1) the witness is incapable of expression concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand the witness or (2) the witness is incapable of understanding the duty of a witness to tell the truth.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Witness presumed to speak the truth, 26-1-302.

Criminal actions — applicability of rule, 46-16-211.

Competency of spouse — criminal actions, 46-16-212.

Rule 602. Lack of personal knowledge.

A witness may not testify as to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

"Hearsay" defined, Rule 801, M.R.Ev. (see Title 26, ch. 10).

Rule 603. Oath or affirmation.

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Oaths and affirmations, Title 1, ch. 6, part 1.

Affirmation in lieu of oath, Rule 43(d), M.R.Civ.P. (see Title 25, ch. 20).

Witness before a master, Rule 53(c), M.R.Civ.P. (see Title 25, ch. 20).

Perjury — crime, 45-7-201.

False swearing — crime, 45-7-202.

Rule 604. Interpreters.

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Appointment by court, Rule 43(f), M.R.Civ.P. (see Title 25, ch. 20).

Deaf persons — interpreters, Title 49, ch. 4, part 5.

Privilege — interpreters for the deaf, 49-4-511.

Rule 605. Competency of judge as witness.

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 606. Competency of juror as witness.

(a) At the trial. A member of the jury may not be called or testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

However, as an exception to this subdivision, a juror may testify and an affidavit or evidence of any kind be received as to any matter or statement concerning only the following questions, whether occurring during the course of the jury's deliberations or not: (1) whether extraneous prejudicial information was improperly brought to the jury's attention; or (2) whether any outside influence was brought to bear upon any juror; or (3) whether any juror has been induced to assent to any general or special verdict, or finding on any question submitted to them by the court, by a resort to the determination of chance.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Conduct of jury after case submitted to it, 25-7-403.

Jury's request for further information, 25-7-405.

Misconduct of jury — new trial, 25-11-102.

Special verdicts and interrogatories, Rule 49, M.R.Civ.P. (see Title 25, ch. 20).

Improper influence in official matters — crime, 45-7-102.

Conduct of jury — criminal trials, Title 46, ch. 16, part 5.

Poll of jury — criminal verdict, 46-16-604.

Rule 607. Who may impeach; party not bound by testimony.

(a) The credibility of a witness may be attacked by any party, including the party calling the witness.

(b) No party is bound by the testimony of any witness.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Parties, Title 25, ch. 5.

Effect of using depositions, Rule 32(c), M.R.Civ.P. (see Title 25, ch. 20).

Scope of examination — not bound by witness — impeachment, Rule 43(b), M.R.Civ.P. (see Title 25, ch. 20).

Criminal depositions — use in impeaching, 46-15-204.

Rule 608. Evidence of character and conduct of witness.

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Privilege against self-incrimination, Art. II, sec. 25, Mont. Const.

Witness presumed to speak the truth — rebuttable, 26-1-302.

Degradation of witnesses' character — need not answer, 26-2-302.

Protection of witnesses from harassment, 26-2-401.

Opinion testimony by lay witnesses, Rule 701, M.R.Ev. (see Title 26, ch. 10).

Inadmissibility of results of polygraph, 37-62-302.

Rule 609. Impeachment by evidence of conviction of crime.

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime is not admissible.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Rights of the convicted — restoration of full rights, Art. II, sec. 28, Mont. Const.

Previous conviction of felony — witness required to answer question, 26-2-302.

Effect of conviction — restoration of civil rights, 46-18-801.

Rule 610. Religious beliefs or opinions.

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by their nature the witness' credibility is impaired or enhanced.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Religious beliefs — equal protection, Art. II, sec. 4, Mont. Const.

Freedom of religion, Art. II, sec. 5, Mont. Const.

Rule 611. Mode and order of interrogation and presentation; re-examination and recall; confrontation.

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination.

(1) Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(2) Evidence developed on cross-examination may be considered by the trier of fact as proof of any fact in issue in the case.

(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

(d) Re-examination and recall. A witness may be re-examined as to the same matters to which the witness testified only in the discretion of the court, but without exception the witness may be re-examined as to any new matter brought out during cross-examination. After the examination of the witness has been concluded by all the parties to the action, that witness may be recalled only in the discretion of the court. This rule shall not limit the right of any party to recall a witness in rebuttal.

(e) Confrontation. Except as otherwise provided by constitution, statute, these rules, or other rules applicable to the courts of this state, at the trial of an action, a witness can be heard only in the presence and subject to the examination of all the parties to the action, if they choose to attend and examine.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Right of accused to confront witnesses, Art. II, sec. 24, Mont. Const.

Order of trial — civil, 25-7-301.

Scope of examination and cross-examination, Rule 43(b), M.R.Civ.P. (see Title 25, ch. 20).

Examination of witnesses — types, 26-1-101.

Leading question — defined, 26-1-101.

Witness required to attend, 26-2-301.

Protection of witnesses from harassment, 26-2-302, 26-2-401.

Videotaped testimony admissible — victims of certain sexual crimes, Title 46, ch. 15, part 4.

Order of trial — criminal, 46-16-402.

Rule 612. Writings used to refresh memory.

If a witness uses a writing to refresh memory for the purpose of testifying, either

(1) while testifying, or

(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce into evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objection shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Failure to produce documents — civil procedure, Rule 37(b), M.R.Civ.P. (see Title 25, ch. 20).

Record on appeal, Rule 9, M.R.App.P. (see Title 25, ch. 21).

Discovery — criminal actions, 46-15-322 through 46-15-329.

Rule 613. Prior statements of witnesses.

(a) Examining witness concerning prior statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

Final written expression — parol or extrinsic evidence, 30-2-202.

Criminal depositions — use for impeaching, 46-15-204.

Extrinsic evidence not to be considered in construction of deed — exceptions, 70-20-202.

Rule 614. Calling and interrogation of witnesses by court.

(a) Calling by court. The court may, on its own motion or at the suggestion of a party, call witnesses and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by court. The court may interrogate witnesses, whether called by itself or a party; provided, however, that in trials before a jury, the court's questioning must be cautiously guarded so as not to constitute express or implied comment.

(c) Objections. Objections to the calling of a witness by the court or to the interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Powers of masters, Rule 53(c), M.R.Civ.P. (see Title 25, ch. 20).

Objections to admissibility of evidence, Rule 104, M.R.Ev. (see Title 26, ch. 10).

Rule 615. Exclusion of witnesses.

At the request of a party, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Article VII

Opinions and Expert Testimony

Article Cross-References

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Expert witness, 26-2-505.

Rule 701. Opinion testimony by lay witnesses.

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 702. Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Pretrial discovery regarding experts, Rule 26(b), M.R.Civ.P. (see Title 25, ch. 20).

Polygraph examiners — inadmissibility of results of examinations, 37-62-302.

Rule 703. Basis of opinion testimony by experts.

The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in a particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Rule 704. Opinions on ultimate issue.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 705. Disclosure of facts or data underlying expert opinion.

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Scope of discovery of experts, Rule 26(b)(4), M.R.Civ.P. (see Title 25, ch. 20).

Article VIII
Hearsay

Rule 801. Definitions.

The following definitions apply under this article:

(a) Statement. A statement is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A declarant is a person who makes a statement.

(c) Hearsay. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of subsequent fabrication, improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of that relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 802. Hearsay rule.

Hearsay is not admissible except as otherwise provided by statute, these rules, or other rules applicable in the courts of this state.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Record of excluded evidence, Rule 43(c), M.R.Civ.P. (see Title 25, ch. 20).

Transaction rule — hearsay exception, 26-1-103.

Rule 803. Hearsay exceptions: availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then-existing mental, emotional, or physical condition. A statement of the declarant's then-existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed.

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time of the acts, events, conditions, opinions, or diagnosis, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. However, written reports from the Montana state crime laboratory are within this exception to the hearsay rule when the state has notified the court and opposing parties in writing of its intention to offer such report or reports in evidence at trial in sufficient time for the party not offering the report or reports (1) to obtain the depositions before trial of the person or persons responsible for compiling such reports, or (2) to subpoena the attendance of said persons at trial. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. To the extent not otherwise provided in this paragraph, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly

recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (i) investigative reports by police and other law enforcement personnel; (ii) investigative reports prepared by or for a government, a public office, or an agency when offered by it in a case in which it is a party; (iii) factual findings offered by the government in criminal cases; (iv) factual findings resulting from special investigation of a particular complaint, case, or incident; and (v) any matter as to which the sources of information or other circumstances indicate lack of trustworthiness. However, written reports from the Montana state crime laboratory are within this exception to the hearsay rule when the state has notified the court and opposing parties in writing of its intention to offer such report or reports in evidence at trial in sufficient time for the party not offering the report or reports (1) to obtain the depositions before trial of the person or persons responsible for compiling such reports, or (2) to subpoena the attendance of said persons at trial.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement or data compilation, or entry.

(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more, the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce or dissolution of marriage, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation as to character. Reputation of a person's character among associates or in the community.

(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal prosecution, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to personal, family, or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having comparable circumstantial guarantees of trustworthiness.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990; amd. Sup. Ct. Ord. Oct. 18, 1990.

Cross-References

Preference for contemporaneity — maxim, 1-3-226.

Interrogatories — business records involved in answering, Rule 33(c), M.R.Civ.P. (see Title 25, ch. 20).

Nonexistence of record — authentication, Rule 44(b), M.R.Civ.P. (see Title 25, ch. 20).

Transaction rule — hearsay exception, 26-1-103.

Motor vehicle accident reports — confidential — not admissible, 61-7-114.

Rule 804. Hearsay exceptions: declarant unavailable.

(a) Definition of unavailability. Unavailability as a witness includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, (A) in civil actions and proceedings, at the instance of or against a party with an opportunity to develop the testimony by direct, cross, or redirect examination, with motive and interest similar to those of the party against whom now offered; and (B) in criminal actions and proceedings, if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross, and redirect examination.

(2) Statement under belief of impending death. A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstance of what the declarant believed to be impending death.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable person in the declarant's position would not have made the statement unless the declarant believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce or dissolution of marriage, legitimacy, relationship by blood, or family history, even though the

declarant had no means of acquiring the personal knowledge of the matter stated; or

(B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having comparable circumstantial guarantees of trustworthiness.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Admissions by party — pretrial discovery — may not be used in other proceeding, Rule 36(b), M.R.Civ.P. (see Title 25, ch. 20).

Writings made against author's interest, 26-1-607.

Subpoena of witness, Title 26, ch. 2, parts 1 and 2.

Effect of former judgments and orders, Title 26, ch. 3.

Criminal depositions — use at trial or hearing, 46-15-204.

Rule 805. Hearsay within hearsay.

Hearsay included within hearsay is not excluded under the hearsay rule if each part of a combined statement conforms with an exception to the hearsay rule provided in these rules.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 806. Attacking and supporting the credibility of declarant.

When a hearsay statement, or a statement defined in Rule 801(d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked and, if attacked, may be supported by any evidence which would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990; amd. Sup. Ct. Ord. June 26, 1990, eff. June 26, 1990.

Cross-References

Impeachment of witnesses, Rule 43(b), M.R.Civ.P. (see Title 25, ch. 20).

Impeachment of own witnesses, Rule 607, M.R.Ev. (see Title 26, ch. 10).

Article IX
Authentication and Identification

Article Cross-References

Subpoena — production of documentary evidence, Rule 45(b), M.R.Civ.P. (see Title 25, ch. 20).

Alterations in writing — explanations of, 26-1-106.

Rule 901. Requirement of authentication or identification.

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Method provided by statute or rule. Any method of authentication or identification provided by statute, these rules, or other rules applicable in the courts of this state.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Proof of execution of instrument — handwriting, 1-5-302.

Genuineness of document — failure to admit — liable for expenses, Rule 37(c), M.R.Civ.P. (see Title 25, ch. 20).

Authentication of official record, Rule 44(a), M.R.Civ.P. (see Title 25, ch. 20).

Presumptions of authenticity — list of writings, 26-1-602.

Driving under influence of alcohol or drugs — test evidence admissible, 61-8-404.

Radar speed determinations — admissibility, 61-8-702.

Rule 902. Self-authentication.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. Except as otherwise provided by statute, a document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign public documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution of attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If a reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) or complying with any law of the United States or of this state.

(5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.

(7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions created by law. Any signature, document, or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Proof of execution of instrument, Title 1, ch. 5, part 3.

Court reporter's report — prima facie evidence of contents, 3-5-612; Rule 80, M.R.Civ.P. (see Title 25, ch. 20).

Authentication of official record — foreign and domestic, Rule 44(a), M.R.Civ.P. (see Title 25, ch. 20).

Other proof of official record — as authorized by law, Rule 44(c), M.R.Civ.P. (see Title 25, ch. 20).

Official publication — presumption of authenticity, 26-1-602.

Self-proved wills, 72-2-524.

Rule 903. Subscribing witness' testimony unnecessary.

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Proof of execution — subscribing witnesses, 1-5-301.

Wills — attesting witnesses testimony, 72-2-124, 72-3-309.

Article X

Contents of Writings, Recordings, and Photographs

Article Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Pretrial discovery — writings and recordations, Rule 26(b), M.R.Civ.P. (see Title 25, ch. 20).

Production of documents and other tangible things containing information, Rule 34(a), M.R.Civ.P. (see Title 25, ch. 20).

Genuineness of document — failure to admit — expenses for proof, Rule 37(c), M.R.Civ.P. (see Title 25, ch. 20).

Subpoena — production of documentary evidence, Rule 45(b), M.R.Civ.P. (see Title 25, ch. 20).

Alterations in writing — explanation of, 26-1-106.

Motor vehicle accident reports — confidential — not admissible, 61-7-114.

Rule 1001. Definitions.

For purposes of this article the following definitions are applicable:

(1) Writings and recordings. Writings and recordings consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) Photographs. Photographs include still photographs, x-ray films, video tapes, and motion pictures.

(3) Original. An original of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An original of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original.

(4) Duplicate. A duplicate is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

(5) Copies of entries in the regular course of business. A copy of an entry in the regular course of business consists of an entry in a writing kept in the regular course of business copied from another such writing by manual or mechanical means at or near the time of the transaction.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Inadmissibility of results of polygraph, 37-62-302.

Rule 1002. Requirement of original.

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided by statute, these rules, or other rules applicable in the courts of this state.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Banks and trust companies — copies of transactions — admissibility, 32-1-493.

Rule 1003. Admissibility of duplicates, copies of certain entries.

A duplicate, or copy of an entry in the regular course of business as defined in Rule 1001(5), is admissible to the same extent as an original unless:

(1) a genuine question is raised as to the authenticity of the original; or

(2) in the circumstances it would be unfair to admit the duplicate or copy of an entry in the regular course of business in lieu of the original; or

(3) otherwise provided by statute.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Warehouse receipts and bills of lading — lost and missing documents, 30-7-601.

Banks and trust companies — reproductions of transactions, 32-1-493.

Admissibility of reproduction of driver records, 61-11-102.

Original will required — informal probate, 72-3-203, 72-3-212.

Rule 1004. Admissibility of other evidence of contents.

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) Original not obtainable. No original can be obtained by any available judicial process or procedure; or

(3) Original in possession of opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(4) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 1005. Public records.

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Public records — presumption of correctness, 26-1-602.

Admissibility of reproduction of driver records, 61-11-102.

Rule 1006. Summaries.

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 1007. Testimony or written admission of party.

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Cross-References

Requests for admission — effect, Rule 36, M.R.Civ.P. (see Title 25, ch. 20).

Rule 1008. Functions of court and jury.

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is for the court to determine in accordance with the provisions of Rule 104.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Role of court, 25-7-102, 26-1-201.

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